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ABSTRACT

This publication highlights and explains some 400 court cases from 2002 involving issues of school violence and safety. It is divided into four sections, or topics: (1) "The Fourth Amendment: Search and Seizure" (R. Mawdsley); (2) "Negligence" (W. Evans, Jr.); (3) "Assault on School Personnel" (M. Yates); and (4) "Drugs and Weapons in Schools" (M. Gooden). Each section contains its own index of cases arranged alphabetically. (WFA)

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Nineteenth Series

Violence and School Safety

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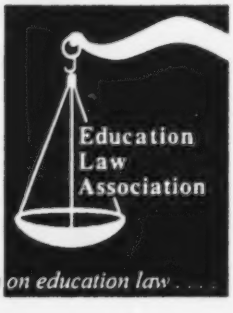

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The Fourth Amendment: Search and Seizure

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Dog-Sniffing Searches

A federal trial court in Texas upheld a search of a student's truck using a drug-sniffing dog. Although the dog's alerting to the truck did not constitute a search itself, it did form the basis for reasonable suspicion. A reasonable scope of the search included a toolbox in the bed of the truck and even though a machete, rather than any suspected substances, was found, the search nevertheless was valid both as to inception and scope and the student could be charged with possession of a weapon on school property. ***Bundick v. Bay City Indep. Sch. Dist.***, 140 F. Supp. 2d 735 [154 Educ. L. Rep. 183] (S.D. Tex. 2001).

Although upholding a grant of summary judgment in favor of a school board and school officials in California who used a drug-sniffing dog, the Ninth Circuit ruled that a random and suspicionless dog-sniff violated students' reasonable expectation of privacy. As students were required to exit their classroom, they passed a drug-sniffing dog stationed outside of the classroom door. The dog sniffed ten jackets and book bags in the room but did not uncover drugs. Even though the court held that such a nonindividualized search was unconstitutional because officials lacked any reasonable basis for suspecting that a student in the room might have possessed drugs, the court affirmed the dismissal of a student's claim for injunctive relief on the basis that he lacked standing to seek such relief. ***B.C. v. Plumas Unified Sch. Dist.***, 192 F.3d 1260 [138 Educ. L. Rep. 1003] (9th Cir. 1999).

A general search in which school officials used a drug dog to sniff student lockers and, when the dog alerted to a student's locker, opened the locker, was a minimally intrusive invasion of students' limited privacy rights. In reversing an appeals court's decision to suppress marijuana found in one of the lockers, the Supreme Court of Pennsylvania found that, given the declared policy of the school in the student handbook, that lockers were the property of the school, student expectation of privacy was minimal. Considering the school principal's substantial evidence of increased drug use in the school, a search of student lockers was reasonable. ***Commonwealth v. Cass***, 709 A.2d 350 [125 Educ. L. Rep. 705] (Pa. 1998).

Locker Searches

In a case of first impression, the Supreme Court of Maryland held that a county board of education policy which required probable cause to search student lockers was invalid. The court reasoned that since a state statute and board of education by laws considered school lockers to be school property, a reasonable suspicion standard was all that could be required. As a result, a knife and a pager found in a student's locker following a search based on an anonymous tip could be introduced into evidence and the conviction was upheld. ***In re Patrick Y.***, 746 A.2d 405 [142 Educ. L. Rep. 401] (Md. 2000).

An appellate court reversed a motion to suppress a gun found in a student's jacket located in another student's locker. Even though the investigation by the school principal was based on a police report that a student in the school had a gun, the search of the student and the locker of his friend were done by a school official who needed only reasonable suspicion. The anonymous tip by the police officer was adequate to satisfy the reasonable suspicion standard. ***In re D.E.M.***, 727 A.2d 570 [133 Educ. L. Rep. 990] (Pa. Super. Ct. 1999).

An appellate court upheld two separate searches of a student's locker looking for three credit cards taken from an assistant principal while the student was in her office. The searches were justified at the inception because this student was the only one who had been unsupervised in the office. The search was justified in scope because one could reasonably expect that the cards might be in the student's locker, where, in fact they were found. The first search where the assistant principal had entered the student's locker using a master key to verify that the cards were, in fact, there was reasonable because the student lacked an expectation of privacy in her locker. The second search in the presence of the student was reasonable because the student consented to the search. ***Shoemaker v. State***, 971 S.W.2d 178 [127 Educ. L. Rep. 1117] (Tex. App. 1998).

An appellate court found that reasonable suspicion supported a search of a student's locker but a state statute permitting searches of student lockers and their contents at any time violated the Fourth Amendment. A teacher's report that he saw two students smoking in a stairway and smelled marijuana was sufficient to support a search of the students' bookbags in their lockers where a pipe was found containing a residue of marijuana. Regarding the statute permitting school officials to search the contents of student lockers without reasonable suspicion, the court found this law to be unduly intrusive on students' expectation of privacy. Nonetheless, because the search in this case was supported by reasonable suspicion, the trial court had properly refused to suppress the evidence. ***In re Adam***, 697 N.E.2d 1100 [127 Educ. L. Rep. 1029] (Ohio Ct. App. 1997).

The search of a student's backpack in his locker by the school's vice-principal was justified where he had received a phone call from an identified parent reporting that her son had seen the student at a high school football game with a gun. An initial search of the locker produced no gun, but when the vice-principal and security officer observed the student place his backpack in his locker five minutes later, the search of the backpack produced a gun. Even though the parent's phone call concerned an event five days earlier than the backpack search, the court found that the information was not stale as to the inception for the search. The second search of the locker, in this case of the backpack, was reasonable as to scope because the time interval was only five minutes and the number of places where a student could

keep a gun were limited. ***In re Joseph G.***, 38 Cal. Rptr. 902 [97 Educ. L. Rep. 1109] (Cal. Ct. App. 1995).

Automobile Searches

An Indiana federal trial court granted summary judgment for a school board over a student's claim that a search of his vehicle for contraband on school property violated his Fourth Amendment rights. The court found reasonable suspicion for the search in a police officer's having seen the student in the parking lot during school hours, security guards having caught a number of students smoking in the area, and the student's attempting to leave the building for the parking lot without the requisite pass. ***Anders ex rel. Anders v. Fort Wayne Cmty. Schs.***, 124 F. Supp. 2d 618 [150 Educ. L. Rep. 155] (N.D. Ind. 2000).

A police officer assigned to a high school, who searched a student's vehicle for a loaded gun after receiving an anonymous tip, was entitled to qualified immunity despite the claimed lack of probable cause because the law was not clearly established that probable cause was required. The school principal who was present during the questioning of the student did not participate in the search. In granting qualified immunity to the police officer and the principal, a federal trial court found that the student had failed to cite any authority that their questioning of him in an office represented a seizure in violation of the Fourth Amendment. ***James v. Unified Sch. Dist. No. 512***, 959 F. Supp. 1407 [118 Educ. L. Rep. 161] (D. Kan. 1997).

The Supreme Court of Mississippi upheld the five-day suspension of a student for possession of alcohol after a school principal and a security officer found unopened bottles of beer in the cab of his truck located in a school parking lot. The principal had responded to a note from a teacher that the student was drinking in his truck in the parking lot. School officials were not required to seek a search warrant for a search of the truck cab where the search of the cab was pursuant to information from the teacher and other students and the principal and officer found empty beer cans in the back of the truck. ***Covington County v. G.W.***, 767 So. 2d 187 [147 Educ. L. Rep. 752] (Miss. 2000).

An appellate court affirmed that an assistant principal was justified in searching a student's automobile in the school parking lot after he smelled marijuana on the student's person and the student admitted that there was marijuana in his car. Because the student claimed that the marijuana in his ashtray had been left there by a stranger who had helped him change a flat tire, the assistant principal's search of the trunk to locate the flat tire was warranted. During the search of the trunk a quantity of marijuana was found under a blanket. Because the search was justified both as to inception and scope, the student's adjudication of delinquency was upheld. ***F.S.E. v. State***, 993 P.2d 771 [141 Educ. L. Rep. 1176] (Okla. Ct. Crim. App. 1999).

Strip Searches

The Eleventh Circuit held that strip searches of school children without individualized suspicion are unreasonable under the Fourth Amendment. A strip search prompted by the theft of $26, while not an insignificant sum, does not present such an extreme threat to school discipline or safety that children could be subjected to intrusive strip searches without individualized suspicion. However, the court upheld summary judgment for school officials because of qualified immunity and for the school board since it could not be liable under a theory of negligent supervision or training. ***Thomas ex rel. Thomas v. Roberts***, 261 F.3d 1160 [156 Educ. L. Rep. 508] (11th Cir. 2001).

A federal trial court granted summary judgment for eight elementary students seeking money damages after being subjected to a partial strip search for missing money. The court found the search was not justified in its inception because it lacked individualized suspicion. ***Bell v. Marseilles Elementary Sch.***, 160 F. Supp. 2d 883 [156 Educ. L. Rep. 1066] (N.D. Ill. 2001).

The Supreme Court of New Mexico upheld a damages award against a school board after freshman and sophomore students in a computer class were strip searched following the disappearance of a student's ring. The court reasoned that requiring adolescent students to strip down to undergarments is sufficiently offensive to require individualized suspicion. The school board's failure to provide a proper training program for its employees, with knowledge that students in the past had been strip searched, represented deliberate indifference for the obvious consequences of that failure. The court ruled that since the right of students to be free of strip searches that were not individualized had been clearly established since 1992, school officials involved in the search were not entitled to qualified immunity. ***Kennedy v. Dexter Consol. Schs.***, 10 P.3d 115 [148 Educ. L. Rep. 1047] (N.M. 2000).

A federal trial court dismissed a variety of claims against a school board after officials strip searched students while looking for $38 that was left unattended on a snack cart. The search required eleven- and twelve-year-old boys to strip to their shorts and to hold out their underwear for inspection. The court rejected a promissory estoppel claim by parents based on the school's student guide since there was no evidence that parents had detrimentally relied on the guide. The board was not liable under section 1983 because there was no indication that it had a policy permitting strip searches. The court also dismissed an equal protection claim for lack of evidence that school officials singled out students for searching based on socio-economic status. A teacher was not liable for damages in battery since there was neither evidence that he touched students nor evidence under an intentional infliction of emotional distress claim that he intended to cause distress. However, the court permitted the

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claimants suit to go to trial based on a negligent infliction of distress theory. ***Higginbottom ex rel. Davis v. Keithley***, 103 F. Supp. 2d 1075 [146 Educ. L. Rep. 145] (S.D. Ind. 1999).

A federal trial court found that a strip search of fifth-grade students was unreasonable because, even in recognizing that some kind of search was appropriate when a child's $26 was missing, it believed that a strip search of all students in the room was disproportionate to the harm sought to be remedied. Students were required to pull down their pants and underwear and girls were required to lift up their bras. Even though the court ruled that the search was unreasonable, it wrote that school officials and a police officer were entitled to qualified immunity while neither the school board nor the county could be liable under section 1983. ***Thomas v. Clayton County Bd. of Educ.***, 94 F. Supp. 2d 1290 [144 Educ. L. Rep. 133] (N.D. Ga. 1999).

According to a federal trial court, a principal and teacher were not entitled to qualified immunity as a result of strip searching female eighth-grade students while looking for missing $200. The search occurred in the girls' locker room and consisted of the girls removing their clothes except for pants and bras and then having a female employee look in the pants and bras for the missing money. The court found the strip search was invalid in its inception because there was no prior evidence of students concealing money in their clothing, no history of thefts at the school, and no evidence that the students searched were other than good students active in extracurricular activities. The court also observed that school officials were not searching for weapons or drugs that might have represented a risk to the safety of students. ***Konop v. Northwestern Sch. Dist.***, 26 F. Supp. 2d 1189 [131 Educ. L. Rep. 201] (D.S.D. 1998).

A federal trial court decided that a strip search of all seventh-grade girls, detained in a gym and locker room after class, in an effort to recover $4.50 allegedly stolen from one of them was not reasonable under the circumstances. In finding that the school's principal and teachers who were involved in the search were not entitled to section 1983 qualified immunity, the court asserted two factual reasons to support its conclusion. First, the subject of the search was not illegal drugs or weapons that might have supported a search of all students. Second, the school personnel had no reason to believe that the girls searched were in possession of the missing money. The court pointed out that the principal's contacting the parents of all of the children after the search was completed, stating that he thought that it went too far, supported the unreasonableness of the search. ***Oliver by Hines v. McClung***, 919 F. Supp. 1206 [108 Educ. L. Rep. 619] (N.D. Ind. 1995).

Searches Less Intrusive Than Strip Searches

A juvenile questioned her being adjudicated a delinquent after a principal searched her and discovered that she was carrying a knife on school property. An appellate court agreed that since the reasonableness standard governed the search, the principal's approaching the student in the school parking lot after the final bell had rung and then searching her was appropriate. Even in affirming, the court remanded to correct a minor error in the adjudication order. ***In re D.D.***, 554 S.E.2d 346 [158 Educ. L. Rep. 855] (N.C. Ct. App. 2001).

A school safety officer's search of a student wearing bandanas that appeared to be gang-related was reasonable. The officer acted appropriately in approaching the student and asking for his identification card and, when the student was unable to produce the card, the officer acted reasonably in bringing the student to the dean's office. The subsequent search of the student that produced a gun was reasonable where the dean suspected that the student attended another school and was present to perpetrate gang-related violence. The student was not entitled to *Miranda* warnings while being questioned by the dean in his office. ***People v. Butler***, 725 N.Y.S.2d 534 [154 Educ. L. Rep. 271] (N.Y. Sup. Ct. 2001).

The Supreme Court of Kansas affirmed that a tip from a student that a peer had marijuana in his hatband provided the basis for reasonable suspicion justifying a search by an assistant principal and a campus police officer. The court held that since neither person was required to provide a *Miranda* warning to the student prior to the search, his statements were admissible in his juvenile proceeding. ***In re L.A.***, 21 P.3d 952 [152 Educ. L. Rep. 804] (Kan. 2001).

An appellate court reversed a student's conviction for possession of marijuana where the search lacked reasonable grounds. The court held that a school attendance officer's reliance on the high school's closed campus policy to require the student, who was seen in proximity to the school parking lot, to empty his pockets was not reasonable. The court noted that a search is lawful in its inception only where reasonable grounds exist for suspecting that it will turn up evidence that the student is violating school rules or state law. ***State v. B.A.S.***, 13 P.3d 244 [149 Educ. L. Rep. 256] (Wash. Ct. App. 2000).

A pat down of a student by a security officer outside the student's classroom following the officer's reception of information about the student was a reasonable search in its inception. The pat down which produced a gun was done out of concern for the officer's safety and was reasonably related to the objectives of the search. Because the search was lawful, the gun could be introduced into evidence at the student's delinquency proceeding. ***C.S. v. State***, 735 N.E.2d 273 [147 Educ. L. Rep. 241] (Ind. Ct. App. 2000).

A pat down of two students by a female school police officer following the observation of smoke coming from a stall in a girls' restroom was reasonable in its inception. The pat down, resulting in the finding of 2.7 grams of marijuana, that occurred in the vicinity of the bathroom where the

smoke was smelled was not intrusive and, thus, a finding of delinquency was upheld. ***D.B. v. State***, 728 N.E.2d 179 [143 Educ. L. Rep. 1025] (Ind. Ct. App. 2000).

A school official's search of a student's book bag based on a tip from another student was reasonable in its inception. When the student refused to turn over the bag voluntarily and a deputy sheriff was called to handcuff the student, the standard for the search was still that of reasonable suspicion. The pellet gun found as a result of this search could be introduced into evidence and the student's finding of juvenile delinquency was upheld. ***In re Murray***, 525 S.E.2d 496 [142 Educ. L. Rep. 546] (N.C. Ct. App. 2000).

A federal trial court upheld a search of a student by a principal looking for evidence of beer drinking on school property. The court found the search valid in its inception because school officials had growing concerns about drinking and drug use in the school and a reliable student had reported overhearing in the girls' locker room four other students, one of whom was the plaintiff, discussing their beer drinking. The court was satisfied that the search was reasonable in scope because the four students were asked only to empty out their pockets and open their backpacks in a room with no other students present. ***Greenleaf ex rel. Greenleaf v. Cote***, 77 F. Supp. 2d 168 [140 Educ. L. Rep. 942] (D. Maine 1999).

A school police officer asked by an assistant principal to assist in the search of a student could remove the student's hand from his pants pocket, and reach his hand into the student's pocket, where he found a gun. Since the officer had been requested to participate by a school official, the standard for the search was reasonable suspicion. In affirming denial of a motion to suppress, a state appeals court found a reasonable basis for inception of the search because the student had been referred to the assistant principal as one with marijuana and, when she approached the student, he smelled of burnt marijuana. This observation warranted taking the student to the office and extending the scope of the search to the student's pockets. When the student refused to remove his hand from one of his pockets when asked to empty his pockets, this provided a reasonable basis for the action of the police officer. ***In re Josue T.***, 989 P.2d 431 [140 Educ. L. Rep. 370] (N.M. Ct. App. 1999).

A student who produced a vial of marijuana when asked in a dean's office by the dean whether he had marijuana lost in his claim that he had been subjected to custodial interrogation. In affirming a trial court's denial of a motion to suppress, an appeals court reasoned that the dean's interrogation did not entitle the student to *Miranda* warnings or consultation with his parents before he was questioned. ***G.J. v. State***, 716 N.E.2d 475 [138 Educ. L. Rep. 488] (Ind. Ct. App. 1999).

An appellate court affirmed that a school official who had reasonable suspicion that a student had a gun could search the student's bag. In so ruling, the court upheld an adjudication of delinquency against the juvenile. ***In re Hector R.***, 695 N.Y.S.2d 359 [138 Educ. L. Rep. 469] (N.Y. App. Div. 1999).

A student unsuccessfully claimed that a gun found during a metal detector and random backpack search at the entrance to his school violated his privacy rights. The Supreme Court of Pennsylvania reasoned that since notices regarding the search had been posted, no individualized reasonable suspicion was necessary for such random searches. ***In re F.B.***, 726 A.2d 361 [133 Educ. L. Rep. 528] (Pa. 1999).

Marijuana found in a student's wallet following a search of students in a restroom was admissible in a juvenile proceeding. The court found reasonable suspicion where some students had notified school officials that other students were smoking marijuana in the restroom, the school official smelled the heavy smoke when entering the restroom, and a school resource officer searched all six to eight boys in the room. ***K.K. v. State***, 717 So. 2d 629 [129 Educ. L. Rep. 884] (Fla. Dist. Ct. App. 1998).

A federal trial court was convinced that a pat-down of all students in a cafeteria looking for a missing 13.5-inch knife with a nine-inch serrated blade used to cut pizza was reasonable. Nothing was removed from students' pockets and students were patted down by persons of the same gender. Where school officials had exhausted other remedies, looking for the knife in the cafeteria and asking any student with the knife to come forward, a limited pat down was not so intrusive considering the school's compelling interest in finding the knife. This search was justified even though the knife was later found in an empty pizza box. ***Brousseau v. Town of Westerly***, 11 F. Supp. 2d 177 [128 Educ. L. Rep. 1069] (D.R.I. 1998).

An appellate court in New York upheld a pat-down search by non-police school personnel of all intermediate students' outer clothing as they arrived for a Halloween party. The court reasoned that the reason for the pat down, to prevent a recurrence of egg-throwing that occurred on three prior Halloweens, was the least intrusive manner to balance the school's interest in preventing disruption and a student's interest in privacy. Consequently, the court reversed a decision to suppress a search that led to the discovery of a gun in the waistband of one of the students. ***In re Matter of Haseen N.***, 674 N.Y.S.2d 700 [127 Educ. L. Rep. 958] (N.Y. App. Div. 1998).

In California, an appellate court affirmed that a random metal detector weapon search of students entering a high school was not unreasonable. On the day in question, an assistant principal conducted random searches of students who came to the attendance office without hall passes and those who were late to school. In rejecting the motion to suppress filed by a student who possessed a knife, the court observed that no other system of more suspicion-intense searches was workable and the searches were minimally

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intrusive in that only a random number of students were tested and none of the students were touched during the search. ***Latasha W. v. People***, 70 Cal. Rptr. 2d 886 [123 Educ. L. Rep. 277] (Cal. Ct. App. 1998).

A federal trial court was satisfied that a search of nineteen student backpacks for missing sneakers from an art room did not violate the Fourth Amendment where school officials presented individualized suspicion as to the particular students who had been in the room. The court asserted that a student who refused to consent to the search could be suspended because the inception of the search was related to the point of time when he refused. ***DesRoches v. Caprio***, 974 F. Supp. 542 [121 Educ. L. Rep. 164] (E.D.Va. 1998).

A school security officer lacked reasonable suspicion to search a sixteen-year-old female student, including reaching into her pockets, merely because she was late to school. In reversing an adjudication of delinquency, a state appeals court reasoned that the circumstances of the search, including the student's age, sex, and nature of the search, rendered the search invalid in its inception. ***D.I.R. v. State***, 683 N.E.2d 251 [120 Educ. L. Rep. 552] (Ind. Ct. App. 1997).

An in-school search of twenty students who appeared to be smoking near the school was lawful where a search revealed that one of the girls was carrying three knives. In affirming qualified immunity for school officials, a federal appeals court reasoned that school officials did not need individualized suspicion since they could not tell by the cloud of smoke over the students which were smoking, nor was the vice-principal required to ask for confessions among the students before conducting a search. A two-hour delay in conducting the searches was considered reasonable. ***Smith v. McGlothin***, 119 F.3d 786 [120 Educ. L. Rep. 145] (9th Cir. 1997).

An appellate court ruled that an assistant principal lacked reasonable suspicion to search a students' belongings after she noticed one of the boys with money in his hand and "fiddling" in his pockets. Even though the search produced a small zip-lock baggie containing marijuana, the search failed in its inception. In reversing an adjudication of delinquency, the court determined that there was no reasonable suspicion even though the student had a prior record, had a bad attitude, and the school had a growing drug problem. ***A.S. v. State***, 693 So. 2d 1095 [118 Educ. L. Rep. 1241] (Fla. Dist. Ct. App. 1997).

The consent of a student in an alternative school to a police officer's search of his jacket was voluntary even though the student was held in a confined space for an extended period against his will. The school's vice-principal and a teacher had received anonymous tips from two other reliable students that the student had marijuana. The court considered additional information that school officials knew about the student, particularly that the student had vocally asserted his right to carry marijuana and had been in counseling for drug problems. All of this information together provided reasonable suspicion for detaining and questioning the student. The subsequent appearance of the police officer did not represent a search problem because the student consented to the search of his jacket. ***State v. Rohlffs***, 938 P.2d 768 [118 Educ. L. Rep. 1218] (Or. Ct. App. 1997).

The standard of reasonable suspicion applies to a search conducted by a police officer at the request of and in conjunction with school officials. The police officer, called to a high school by an assistant principal who had received a tip from an informant that a student might have a knife or gun, could search the student's jacket and, when not finding a weapon there, lift up the bottom of her shirt to reveal the waistband where he saw the handle of a nine-inch knife. The court found that lifting the student's shirt was not so intrusive as to abridge her expectation of privacy. ***State v. Angelia***, 564 N.W.2d 682 [118 Educ. L. Rep. 1191] (Wis. 1997).

Where a student reported to an assistant principal that a peer, later adjudged delinquent for possession of a gun on school property, had a gun, an appellate court held that this gave the assistant principal sufficient reasonable suspicion to conduct a pat-down search. The court added that the assistant principal's requesting that a deputy sheriff assigned to the school assist in the pat down did not change the standard of reasonable suspicion to probable cause. When it came to school officials searching for guns, the court refused to draw a fine line between police officers who were designated as school resource officers and those who were not. ***J.A.R. v. State***, 689 So. 2d 1242 [117 Educ. L. Rep. 795] (Fla. Dist. Ct. App. 1997).

Police officers providing security at an after-prom dance at the high school gym who stopped and searched two students entering by a side door were not entitled to use a reasonable suspicion standard, even though the result of the search produced a handgun. Although one of the students smelled of alcohol, the students, who were not violent in any manner and cooperated with police, did not provide police with probable cause to search them for wrongful possession. The court reasoned that even the smell of alcohol on a student's breath was not sufficient to warrant a search for wrongful possession of alcohol or a search incident to such arrest. ***State v. Tywayne H.***, 933 P.2d 251 [116 Educ. L. Rep. 1234] (N.M. Ct. App. 1997).

The presence of a school board police officer in the office of an assistant principal while she questioned a student about drug sales was not sufficient to suppress the drugs found on the student. The court reasoned that the assistant principal had reasonable suspicion to question the student based on four separate reports from other students and the coincidental presence of the officer in her office did not affect the questioning where the officer, doing paperwork related to his assignment to the school, took no part in the process until after the student placed a plastic bag

containing marijuana on the table. ***State v. D.S.***, 685 So. 2d 41 [115 Educ. L. Rep. 210] (Fla. Dist. Ct. App. 1996).

An appellate court upheld a motion to suppress evidence relating to a high school student, who was stopped by a police officer on entering a school but turned to leave after seeing a metal detector and admitted to possessing the gun when he was stopped. The court reasoned that the police officer who assisted school officials in operating the metal detector lacked reasonable suspicion that the student had a gun under the circumstances. In order for a warrantless search to be valid, the court acknowledged that there must be reasonable ground for suspecting that a search will produce evidence. ***People v. Parker***, 672 N.E.2d 813 [114 Educ. L. Rep. 920] (Ill. App. Ct. 1996).

A high school student adjudicated delinquent for possession of a gun at school failed in his attempt to suppress the admission of the gun into evidence. A court found constitutional a school board policy authorizing random searches of high school students with hand-held metal detectors. Although students have an expectation of privacy in their persons and belongings, passing a metal detector over a student's coat in which a gun was located involved only a minimal intrusion into student privacy. ***State v. J.A.***, 679 So. 2d 316 [112 Educ. L. Rep. 1107] (Fla. Dist. Ct. App. 1996).

A court upheld a delinquency finding for a student who was found, during a search at the entrance to his school, to have a box cutter in his coat pocket. Even though the persons conducting the search did not have individualized suspicion to conduct the search of the student's coat, the court found the search permissible because it was conducted in the same manner as to all students and was minimally intrusive. The court also observed that the search of all students was justified because of the high rate of violence in area schools. ***In re Interest of S.S.***, 680 A.2d 1172 [111 Educ. L. Rep. 1270] (Pa. Super. Ct. 1996).

A principal who had been informed by a student that another student had drugs in his jacket and was going to make a drug sale in school had reasonable suspicion to ask the student to turn out the pockets on his jacket. Even though the two plastic packets that were found contained materials that looked like marijuana, but later tested negative, the principal was justified in suspending the student to an alternative school for nine days for possessing a look-alike substance in violation of school policy. ***C.B. v. Driscoll***, 82 F.3d 383 [108 Educ. L. Rep. 1126] (11th Cir. 1996).

The Eighth Circuit upheld a generalized search of all male students in grades six through twelve by a principal and a teacher looking for a knife that might have been used to make fresh cuts on bus seats. After the search began, the principal was told that a student might have a gun. The students were required to remove their jackets, shoes and socks, and empty their pockets. A hand-held metal detector was passed over each student and positive responses resulted in a pat down. The search of a ninth grader produced a match box containing a white substance later identified as crack cocaine. After a hearing, the student, expelled for the remainder of the school year, sued and recovered a $10,000 judgment. In reversing the judgment, the appeals court upheld the search even though it lacked individualized suspicion because the search for weapons represented a risk to all students and was minimally intrusive. ***Thompson v. Carthage Sch. Dist.***, 87 F.3d 979 [108 Educ. L. Rep. 602] (8th Cir. 1996).

Three searches of students in an Illinois high school that resulted in the finding of guns produced different results. A first student lost in his claim that the school lacked individualized suspicion in using a metal detector at the entrance to the school. The court held that individualized suspicion was not necessary with regard to metal detectors. The positive reading of the detector was reasonable suspicion for a police officer assigned to the school to pat down the student, which resulted in the finding of a handgun. A second student lost in his claim that his being removed from class by a school security officer and taken to an empty room where he revealed that he had a gun in his pocket represented an unreasonable search. The court found the questioning that led to the discovery of the gun to be reasonable because the security officer had acted pursuant to a tip that the student had a gun. A third student was successful in having the gun discovered in his pocket suppressed because of a forty-five-minute delay between the time when he was taken to a room and the pat-down that produced the gun. The court reasoned that the delay in patting down the student indicated that school officials did not have a reasonable suspicion that the student had a gun on his person. ***People v. Pruitt***, 662 N.E.2d 540 [108 Educ. L. Rep. 329] (Ill. App. Ct. 1996).

A student at an alternative school unsuccessfully challenged the search of a flashlight that was taken from his hand by a police officer who was assigned to the school. The flashlight contained five baggies of a white, rock-like substance. In reversing an earlier order suppressing this evidence, the Supreme Court of Illinois observed that, even though the flashlight itself was not contraband, the officer had reasonable suspicion for the inception of a search because school policy prohibited possession of any item that could be used as a weapon. The court found that there was reasonable suspicion based on the student's having a locker next to a friend who was searched earlier in the day for suspected drug possession and the two students talking and giggling in the presence of the officer. Under the totality of the circumstances, the court was satisfied that the search was constitutional even though the search of the student's friend, pursuant to a tip from two teachers, had not produced any drugs and the student's friend was not identified by the teachers. ***People v. Dilworth***, 661 N.E.2d 310 [107 Educ. L. Rep. 226] (Ill. 1996).

An appellate court affirmed a student's conviction for distributing drugs on campus based on the drugs the school administrator found in a Bic pen that the defendant gave

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another student for distribution. The administrator had reasonable suspicion to search the pen based on information from a confidential informant. The drugs were given to police and resulted in a search of the defendant's home, where, after securing consent to search from defendant's father, additional drugs were found. Defendant was not entitled to know the name of the informant who provided information to the administrator regarding the presence of drugs in the pen. ***State v. Biancamano***, 666 A.2d 199 [104 Educ. L. Rep. 776] (N.J. Super. Ct. 1995).

A search of a student's book bag was justified where school officials had received a report that the school's missing locker combination book was in the student's book bag. In denying the student's motion to suppress the book found in his book bag, the court found persuasive the past reported theft of items from a number of student lockers, along with the report about the book bag. In rejecting the student's claim that the police officer searching the book bag lacked probable cause, the court observed that police officers employed by school boards need only satisfy the reasonable suspicion test in conducting searches. ***S.A. v. State***, 654 N.E.2d 791 [103 Educ. L. Rep. 381] (Ind. Ct. App. 1995).

A student unsuccessfully challenged a principal's request, made in a closed office in the presence of the principal and the assistant principal, that the student remove his jeans, shirt, shoes, and socks and turn his pockets out. The court found the search to be reasonable in its inception because a woman came to the school alleging that the student had taken $150 from the front seat of her car. The court found the search reasonable as to its scope because the student had not been required to remove his underwear and had not been touched inappropriately. In addition, the court found that, when the search of the student revealed no money, the search could reasonably be extended to the student's locker. ***Singleton v. Bd. of Educ.***, 894 F. Supp. 386 [102 Educ. L. Rep. 1099] (D. Kan. 1995).

A student convicted of intent to sell a controlled substance and felonious use of a firearm unsuccessfully attempted to suppress the evidence from his criminal trial. The Supreme Court of New Hampshire upheld the search based on an anonymous phone call that the principal's administrative assistant received which stated that the student would be carrying drugs to school. The court agreed that the danger to students based on the information available to the principal justified asking the student to empty his pockets and searching his knapsack. ***State v. Drake***, 662 A.2d 265 [102 Educ. L. Rep. 605] (N.H. 1995).

A school officer's brief detention of a student to investigate whether he had a gun was reasonable where the officer had received an anonymous tip that a student in a physical education class had a bulge in his pants and was believed to be carrying a gun. Although the officer did not observe the bulge in the student's pants, the gun fell out of the pants while they were walking. In refusing to grant the student's motion to suppress, the court found sufficient support for detaining and questioning the student because of the anonymous tip and because the description of the student's clothing was such that the officer could easily identify him among the 150 students in the gym. ***S.D. v. State***, 650 So. 2d 198 [98 Educ. L. Rep. 1131] (Fla. Dist. Ct. App. 1995).

The Supreme Court of Hawaii upheld a principal's request that a female student, found in a tunnel near the school with three other students, empty her purse in which a small bag of marijuana was discovered. When the vice-principal and school security officer approached the tunnel, they smelled marijuana smoke although they could not identify which of the four students were smoking. The court found that school officials had individualized suspicion to search the student's purse because of the odor of burning marijuana emanating from the confined area known to be frequented by individuals who smoked marijuana. In addition, the officials observed no other persons in the area, and only two of the four students had purses. Given this factual basis, the court found reasonable the request that the purse be emptied both as to inception and scope. ***In re Interest of Doe***, 887 P.2d 645 [96 Educ. L. Rep. 1132] (Hawaii 1994).

A court refused to suppress evidence obtained as a result of a pat down of a student in a school restroom by the school's security officer. The smell of smoke in the restroom, the student's turning away from the officer when he entered the restroom, and the student's admission to smoking supported the pat down. The officer first found cigarettes in the student's front right pocket and then three packets of crack cocaine in the left front pocket. Even though the officer found the cigarettes first, the court found the search of the second pocket where the cocaine was found to be within the reasonable scope of the search. ***In re S.K.***, 647 A.2d 952 [94 Educ. L. Rep. 365] (Pa. Commw. Ct. 1994).

A high school student who pleaded guilty to possession of drugs that were found in his car on school property unsuccessfully challenged a search in the school that preceded the search of the car. A court upheld a pat down of the student by an assistant principal and his directives to the student to empty his pockets, remove his shoes and socks, and pull down his pants. Even though no marijuana or gun was found on the student, the court found the search reasonable both as to inception and scope because a police officer assigned to the school had received a report that the student had carried a gun to school the previous day and because, on the day of the search, the student was apprehended attempting to skip school. When a search of the student's locker reveled no contraband, the search of the student's car produced a white powder, a triple beam balance, and marijuana. ***Wilcher v. State***, 876 S.W.2d 466 [91 Educ. L. Rep. 719] (Tex. App. 1994).

Searches of Students Away from Schools

An assistant principal's belief that he had absolute authority to enforce school rules within 1,000 feet of a school was insufficient to establish that he had statutory authority, before school started, to seize students who he suspected were smoking. Even if the principal had such authority, he had no basis for ordering the students into his car to drive them to school once he determined that they were not smoking. Marijuana found in a student's book bag as a result of a subsequent search at school could not be introduced into evidence and, thus, the student's conviction for possession of marijuana had to be reversed. ***State v. Crystal B.***, 24 P.3d 771 [154 Educ. L. Rep. 978] (N.M. Ct. App. 2000).

An appellate court in Pennsylvania reversed a finding that three loaded revolvers and a sawed-off shotgun discovered in a student's car off school premises by school police officers could be admitted into evidence. The court reasoned that the officers lacked jurisdiction under state law to search a car off school premises, even though the officers could see the sawed-off shotgun through the window of the car. ***Commonwealth v. Williams***, 749 A.2d 957 [143 Educ. L. Rep. 951] (Pa. Commw. Ct. 2000).

An appellate court affirmed a grant of summary judgment in favor of school officials who searched the hotel rooms of students while on a school-sponsored trip. The court agreed that the search, which led to the discovery of alcohol and marijuana, was based on their reasonable concern that it violated school policy. All parents had signed a parental permission slip acknowledging that this trip was a school-sanctioned event, that alcohol and drugs were prohibited on the trip, and that students in violation of this policy would be sent home early. In addition, each student signed a "Drug, Alcohol and Incident Free Pledge" that contained similar language. After seeing a large number of students congregated around one of the hotel rooms and smelling marijuana, the principal secured assistance of hotel security to search students' rooms. The policy of the hotel was to permit chaperones to search student rooms. The principal searched those areas in each room that were in plain view and safes in the rooms, using pass keys provided by the hotel and discovered the contraband in the safes. The students were then sent home for violating school rules and were suspended from classes. ***Rhodes v. Guarricino***, 54 F. Supp.2d 186 [137 Educ. L. Rep. 258] (S.D.N.Y. 1999).

Taking high school seniors, who had just begun their sanctioned senior trip, to a police station to be tested for alcohol by a breathalyzer did not violate the Fourth Amendment rights of a student whose blood alcohol level was .033. In upholding the suspension of the student, a federal trial court found that the school officials and police had sufficient facts to establish probable cause for administering the breathalyzer test, among which were the smell of alcohol on the student and statements by students regarding drinking at a party the evening before the trip. ***Juran v. Indep. Or. Cent. Sch. Dist.***, 898 F. Supp. 728 [103 Educ. L. Rep. 1068] (D.Or. 1995).

Police inventory of a student's jacket at the police station that revealed cocaine was justified where the jacket had been given to the police at the time they came to the school to arrest the student for aggravated battery. In reversing a trial court decision suppressing the evidence against the student, a state appeals court found that the teacher, based on the student's aggressive past and present behavior, had reasonable suspicion to believe that the jacket had a weapon that the student might use against other students. Once the police arrested the student, the search of the jacket at the police station was valid as being pursuant to a valid arrest. Even though no weapon was found in the jacket, the court believed the teacher's reasonable suspicion was sufficient to warrant her turning the jacket over to the police. ***People v. McKinney***, 655 N.E.2d 40 [103 Educ. L. Rep. 798] (Ill. App. Ct. 1995).

Drug Testing

Relying largely on *Acton*, the Supreme Court held that suspicionless random drug testing for students in extracurricular activities does not violate the Fourth Amendment's protection from unreasonable searches. The court pointed out that students in all extracurricular activities have diminished expectation of privacy where they are participating voluntarily in those activities. Next, the Court asserted that the intrusion was virtually identical to the one in *Acton* insofar as test results were available to school personnel only on a need-to-know basis. Although the Court found some evidence of drug use among students in *Earls*, it suggested that preventing drug use was a sufficient basis to support random drug testing. Requiring individualized reasonable suspicion, the Court concluded, for random drug testing would place an additional burden on public school teachers, could unfairly target members of unpopular groups, and could lead to the fear of lawsuits, thus chilling enforcement of a drug-abuse prevention program. ***Board of Educ. of Indep. Sch. Dist. v. Earls***, 122 S. Ct. 2559 [166 Educ. L. Rep. 79] (2002).

The Supreme Court upheld random drug testing for all students in high school interscholastic athletics. In rejecting a student's and parent's claim that signing a consent form for random testing before being permitted to participate violated their Fourth Amendment rights, the Court found that random drug testing satisfied three concerns regarding searches and seizures. First, the privacy rights of athletes are less than other students because of suiting up and showering in locker rooms. Second, the character of intrusion on the student's privacy rights is minimal because monitoring of the production of a urine sample is only enough to make certain that the sample has not been tampered with. Third, the school's reason for drug testing was sufficiently important in this case because of increased likelihood of injury to

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athletes on drugs and because the leaders of the drug culture at the school were the athletes. ***Vernonia Sch. Dist. 47 J v. Acton***, 515 U.S. 646 [101 Educ. L. Rep. 37] (1995).

A federal trial court struck down a school board policy mandating drug testing for all entering sixth-grade students and random testing for all students in grades six through twelve at the rate of 10 percent per month. The court found that the board failed to establish a special need for the test based on student drug use. At best, the court noted that the policy attempted generally to reduce drug use among students without targeting the testing to a drug crisis. ***Tannahill ex rel. Tannahill v. Lockney Indep. Sch. Dist.***, 133 F. Supp. 2d 919 [152 Educ. L. Rep. 549] (N.D. Tex. 2001).

An appellate court struck down a school board policy requiring students to consent to random, suspicionless drug and alcohol testing in order to participate in extracurricular activities. The court reasoned that the policy violated the students' right to privacy under the state constitution since the board failed to articulate a reason why the group it chose to test required testing as opposed to the general student population. ***Theodore v. Del. Valley Sch. Dist.***, 761 A.2d 652 [148 Educ. L. Rep. 985] (Pa. Commw. Ct. 2000).

The Seventh Circuit reluctantly upheld a school board's random, suspicionless drug testing policy as a condition for student participation in extracurricular activities. In light of the court's having upheld such a policy in an earlier case, it was of the opinion that it was bound by stare decisis. The court found that the board demonstrated a sufficient government need to justify intrusion into the students' expectation of privacy. The court also upheld random, suspicionless testing of students who drove to school but invalidated the policy as to testing for nicotine since the board did not demonstrate a sufficient government need to overcome students' Fourth Amendment rights. ***Joy v. Penn-Harris-Madison Sch. Corp.***, 212 F.3d 1052 [144 Educ. L. Rep. 866] (7th Cir. 2000).

A high school teacher did not violate the Fourth Amendment rights of a student suspected of being on drugs by escorting her to the school nurse's office, nor did the nurse violate the student's rights by taking her vital signs and observing her behavior. The school principal likewise was justified in requiring the student to produce a urine sample, pursuant to school policy, based on his observation of her appearance and the discovery of pills of an undetermined origin in her purse. Required urinalysis was considered reasonably related to the school's objective in confirming the condition of the student and was not excessively intrusive, even though saliva or breath tests might be considered less intrusive. ***Hedges v. Musco***, 204 F.3d 109 [141 Educ. L. Rep. 1020] (3d Cir. 2000).

The Eighth Circuit upheld a random urinalysis drug-testing policy for all students participating in extracurricular activities in grades seven through twelve. The court held that, even though the school lacked evidence of immediate harm from drug use in the school, the possibility of harm is enough to justify the policy. The court reasoned that a school should not have to wait until there is a demonstrable drug problem before being permitted to have a random drug-testing policy. The Supreme Court has granted certiorari. ***Miller ex rel. Miller v. Wilkes***, 172 F.3d 574 [133 Educ. L. Rep. 765] (8th Cir. 1999).

The Seventh Circuit struck down a urinalysis drug-testing policy required for all students suspended for three or more days for fighting. In reversing a trial court's refusal to enjoin enforcement of the policy, the court reasoned that it was not justified by special needs. The court pointed out that the statistical data and professional literature concerning the causal nexus between use of illegal substances and violent behavior was not sufficient to create a reasonable suspicion that created a special need for the policy. ***Willis v. Anderson Cmty. Sch. Corp.***, 158 F.3d 415 [130 Educ. L. Rep. 89] (7th Cir. 1998).

A student challenged a school board policy permitting random urinalysis drug testing of members of a marching band who participated in it as an extracurricular activity on the ground that it violated the Fourth Amendment. In reversing an earlier decision upholding the policy, the Supreme Court of Colorado found that high school marching band students have a higher expectation of privacy than athletes. The court concluded that the policy impermissibly swept students enrolled in for-credit, instrumental classes and applied to student groups not demonstrated to have contributed to the school's drug problem within its reach. ***Trinidad Sch. Dist. No. 1 v. Lopez***, 963 P.2d 1095 [129 Educ. L. Rep. 812] (Colo. 1998).

The Seventh Circuit held that the random drug-testing policy which called for urinalysis for all students in high school extracurricular activities was reasonable where evidence existed that a minority of students used drugs, tobacco, and alcohol. The court found that some evidence of drug use among students, plus the need to deter use of drugs, were sufficient to overcome students' expectations of privacy. Although use of drugs and participation in nonathletic programs does not represent the same risk level as using drugs and participating in athletics, the court observed that participation in extracurricular activities is a privilege, not a right, and any student is subject to extra rules and regulations. ***Todd v. Rush County Schs.***, 133 F.3d 984 [125 Educ. L. Rep. 18] (7th Cir. 1998).

The Seventh Circuit upheld a teacher's requirement that an unruly student with bloodshot eyes and dilated pupils submit to a medical assessment. The medical assessment, which consisted of taking the student's blood pressure, did not lead the nurse to conclude that the student was under the influence of drugs, nor did she observe the symptoms noted by the teacher. Nonetheless, the court found the assessment and a subsequent search where the student removed all of his clothes except for an undershirt and his pants to be reason-

able. The assessment occurring two hours after the teacher observed the symptoms may have accounted for the failure of the nurse to observe the same symptoms. Neither the assessment nor the search were so intrusive as to be unconstitutional. ***Bridgman v. New Trier High Sch. Dist. No. 203***, 128 F.3d 1146 [122 Educ. L. Rep. 94] (7th Cir. 1997).

A high school student successfully challenged a school board's policy requiring student and parent consent for random drug testing before students could participate in interscholastic athletics. In granting the student's request for an injunction, the court reasoned that the policy violated a state constitutional provision. School officials' perceptions regarding drug use among students and injuries to athletes using drugs were not sufficient to overcome the student's privacy interest in his excretory functions. Without evidence of student drug use and injury to athletes, the school's interests were not sufficiently strong to overcome the privacy interest. ***Moulè v. Paradise Valley Unified Sch. Dist.***, 863 F.Supp. 1098 [94 Educ. L. Rep. 1345] (D. Ariz. 1994).

Right to Privacy

A student convicted of violating the civil rights of his teachers and of two counts of malicious destruction of property through the use of graffiti had no privacy expectation in his handwriting. In reversing a trial court decision suppressing introduction of the student's handwriting, the state supreme court held that a student's homework assignments and tests did not come within the definition of "education records" and were thus not protected under FERPA. ***Commonwealth v. Bucella***, 751 N.E.2d 373 [155 Educ. L. Rep. 799] (Mass. 2001).

The Fifth Circuit decided that high school students who were detained in a vice-principal's office by police officers for questioning regarding a rumored after-school fight did not have a claim under the Fourth Amendment. The court determined that students have a lesser expectation of privacy and that the school's interest in protecting them outweighed any interest that they had in attending classes. ***Milligan v. City of Slidell***, 226 F.3d 652 [147 Educ. L. Rep. 429] (5th Cir. 2000).

A federal trial court decreed that school officials violated a student's Fourth Amendment right against unlawful seizure when an elementary principal pulled him out of class five days in a row and questioned him in an allegedly coercive manner about an arson incident that another student had confessed to. As a result of this questioning, the student confessed to bringing a torch to school and giving it to the boy who started the fire. In denying the school board's motion to dismiss the complaint, the court held that continuing to question the student after another had confessed sufficiently alleged a degree of unreasonableness. ***Bills v. Homer Consol. Sch. Dist.***, 959 F.Supp. 507 [117 Educ. L. Rep. 1064] (N.D. Ill. 1997).

Placement of an emotionally disabled eighth-grade student in a time-out room, while a de minimis violation of the student's liberty interest, was not so excessively intrusive as to violate the Fourth Amendment. A federal trial court was of the opinion that, given the student's age and emotional disability, the placement for ten minutes in the room was not unreasonable. ***Rasmus v. State of Ariz.***, 939 F. Supp. 709 [113 Educ. L. Rep. 734] (D. Ariz. 1996).

School officials did not violate the Fourth Amendment's prohibition against unreasonable seizures in transporting one child to another school so that siblings could be interviewed together involving alleged child abuse by the children's parents. The actions of school officials in reporting the suspected abuse and in transporting the child were protected by qualified immunity. ***Wojcik v. Town of N. Smithfield***, 76 F.3d 1 [108 Educ. L. Rep. 1065] (1st Cir. 1996).

After a heated confrontation between a teacher and a student, a teacher's grabbing a student's elbow and wrist to send her from the classroom and then releasing her when asked to let her go did not present a Fourth Amendment violation. In affirming summary judgment in favor of the school board, the Seventh Circuit observed that a teacher or administrator who seizes a student does so in violation of the Fourth Amendment only when the restriction of liberty is unreasonable under the circumstances then existing and apparent. The court acknowledged that the standard to be applied is an objective one that does not inquire into a teacher's intentions or whether a student thought the conduct was out of bounds. ***Wallace v. Batavia Sch. Dist.***, 68 F.3d 1010 [104 Educ. L. Rep. 132] (7th Cir. 1995).

Questioning of a female student by school employees regarding physical abuse at home did not violate that student's right to privacy under the Fourth Amendment. In rejecting claims by the student and her parents for section 1983 damages, a court held that the school's interest in investigating whether officials had "reason to believe" under the state's child abuse reporting statute outweighed the student's interest in not being questioned. School officials' denial of the student's request to have her parents or her brother present during questioning did not change the character of the intrusion into the student's privacy so as to state a cause of action. ***Picarella v. Terrizzi***, 893 F. Supp. 1292 [102 Educ. L. Rep. 1034] (M.D. Pa. 1995).

A mother was unsuccessful in her claim that the removal of her nine-year-old son to the principal's office where he could be questioned by two social services case workers amounted to an unlawful seizure. Even if being taken to the principal's office could be considered to be a seizure, it was reasonable in its inception because the child had been identified by a five-year-old female victim as her abuser. The interview was reasonable as to scope because it lasted only ten minutes and was necessary to determine the child's role in the abuse incident. The court reasoned that a

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ten-minute interview with the child was a de minimis interference with his privacy interests under the liberty provision of the Fourteenth Amendment. ***Doe v. Bagan***, 41 F.3d 571 [95 Educ. L. Rep. 907] (10th Cir. 1994).

Miscellaneous

A student stated a claim for unlawful seizure in violation of the Fourth Amendment by alleging that his physical education teacher forced him to stand naked for sixteen minutes in plain view of other boys in the locker room as a disciplinary measure for deliberately ripping a school-issued swim suit. The court ruled that the teacher's actions could not be considered reasonable as a matter of law. ***Daniel S. v. Bd. of Educ. of York Cmty. High Sch.***, 152 F. Supp. 2d 949 [156 Educ. L. Rep. 135] (N.D. Ill. 2001).

The Supreme Court of California held that detaining a student for questioning outside a classroom does not constitute a search and seizure under the Fourth Amendment. A detention of a student that resulted in the student consenting to a pat down which produced a knife was not the kind of conduct protected under the Fourth Amendment. In upholding a trial court's refusal to suppress the knife, the supreme court reasoned that school officials, in order to move students about their buildings, need broad discretion in directing students. ***In re Randy G.***, 110 Cal. Rptr. 2d 516 [155 Educ. L. Rep. 1292] (Cal. 2001).

In the wake of Columbine, a federal trial court in Texas upheld heavy-handed tactics by police in frisking, handcuffing, and leading fourteen students out of their school building, and detaining them for several hours at a municipal building. The reason for this conduct was a threatening letter found in a school computer room and the students being detained were singled out because they sat at the lunchtime picnic table with the student school officials suspected had written the letter. Even though the court was not amused by the police tactics, it conceded that school officials had little experience with terrorists and the court would not second guess the decisions of school officials in addressing potentially tragic circumstances. ***Stockton v. City of Freeport***, 147 F. Supp. 2d 642 [155 Educ. L. Rep. 286] (S.D. Tex. 2001).

A physical education teacher's forcible confinement of an eighth-grade student in a storage closet, in order to recover money from the student he alleged was his, amounted to a seizure under the Fourth Amendment. As a result, the student was entitled to go to trial on the issue whether the confinement was an unreasonable seizure. ***Bisignano v. Harrison Cent. Sch. Dist.***, 113 F. Supp.2d 591 [147 Educ. L. Rep. 529] (S.D.N.Y. 2000).

An appellate court affirmed that state statutes requiring outsiders on school premises to register in a school office were a reasonable method of protecting the safety of students and that a school safety officer had a reasonable basis for stopping and detaining a nonstudent who refused to divulge his purpose at the school. In upholding a finding of delinquency against a nonstudent juvenile for battery and resisting arrest, the court agreed that the escalation of force by the officer was required by the juvenile's refusal to identify himself and his purpose for being on school property. ***In re Joseph F.***, 102 Cal. Rptr. 2d 641 [149 Educ. L. Rep. 835] (Cal. Ct. App. 2000).

An appellate court applied the exclusionary rule to an administrative hearing in reversing the one-year suspension of a student who brought a gun to school. Once a family court decided that the gun could not be admitted into evidence in a delinquency proceeding because it had been acquired by an improper search, the court ruled that a school board's administrative hearing was bound by res adjudicata to exclude the gun. ***Juan C. v. Cortines***, 647 N.Y.S.2d 491 [113 Educ. L. Rep. 353] (N.Y. App. Div. 1996).

Placement of a disruptive student in a juvenile detention facility holding room at the beginning of a school-sponsored field trip to that facility did not deprive the student of Fourteenth Amendment due process rights. In granting summary judgment for the school board and qualified immunity for school officials, the court found justifiable the teachers' reason in acting so as to keep other students from being distracted. The court noted that the room where the student was detained was not available to inmates of the facility and was adequate in size, and the student, once the field trip was finished, was immediately let out. ***Hassan v. Lubbock Indep. Sch. Dist.***, 55 F.3d 1075 [100 Educ. L. Rep. 862] (5th Cir. 1995).

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Nineteenth Series

Negligence

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Off School Property and After School Hours

The mother of a student who was shot and killed in a parking lot after a school dance brought a negligence action, over an alleged lack of security, against a school board and the club where the dance took place. On further review of an adverse judgment against the board, an appellate court in Louisiana reversed in its favor on the ground that school officials lacked the requisite degree of foreseeability that would have imposed a duty on them to provide additional security in the parking lot. Further, the court applied a balancing test in deciding whether the club owed a duty of care to protect its customers from the criminal acts of third parties. Insofar as it was convinced that there was only slight foreseeability and gravity of harm in the parking lot, the court affirmed that it did not have a duty to protect the student. ***Lee v. B & B Ventures***, 793 So. 2d 215 [157 Educ. L. Rep. 428] (La. Ct. App. 2001).

A middle school student challenged a grant of summary judgment in favor of school officials and the department of natural resources in his suit to recover for injuries he incurred at home where he struck a shotgun shell after hearing a firearms safety-related presentation. The Supreme Court of Indiana was of the view that while genuine issues of material fact precluded a grant of summary judgment, the student's being found minimally negligent as a matter of law by having hit the shell with an hammer and chisel meant that the doctrine of contributory negligence barred his recovery as a matter of law. ***Mangold v. Dep't of Natural Res.***, 756 N.E.2d 970 [157 Educ. L. Rep. 861] (Ind. 2001).

A school board challenged the denial of its motion for summary judgment in a case filed by a high school student who was assaulted in school after class hours by a former student. An appellate court in New York reversed in favor of the board on the ground that it was not liable absent a showing that the attack was foreseeable. The court acknowledged that although there had been previous trespassing incidents by former students, none involved physical violence against students. The court added that any negligence by school officials was not the proximate cause of the student's injuries. ***Nossoughi v. Ramapo Cent. Sch. Dist.***, 731 N.Y.S.2d 78 [157 Educ. L. Rep. 806] (N.Y. App. Div. 2001).

Where a middle school student was injured after he was chased off school property by another pupil and hit by an automobile, he and his mother challenged a grant of summary judgment in favor of the school board. The Supreme Court of Kansas affirmed that the student could not recover for negligence absent evidence that school officials assumed a duty to render services to, protect, or supervise the student before classes began as he was not in their custody or control. ***Glaser v. Emporia Unified Sch. Dist. No. 253***, 21 P.3d 573 [152 Educ. L. Rep. 795] (Kan. 2001).

In New York, an appellate court held that a board was not liable where a student was assaulted in her home after the end of the school day. The court was of the view that the assault on the student by her estranged boyfriend, in violation of an order of protection, could not be considered the district's negligence. ***Tarnaras v. Farmingdale Sch. Dist.***, 694 N.Y.S.2d 413 [137 Educ. L. Rep. 757] (N.Y. App. Div. 1999).

A female foreign exchange student and her parents sued a sponsoring agency for its alleged failure to supervise her stay in the United States in light of her having become sexually involved with the father of her host family. A federal trial court in Wisconsin refused to grant the agency's motion for summary judgment based on its failure to monitor the student's attendance adequately, to follow-up with personal visits, telephone calls, and supervision, and for violations of regulations governing exchange students. ***Beul v. ASSE Int'l***, 55 F. Supp. 2d 942 [137 Educ. L. Rep. 574] (E.D. Wis. 1999).

Where a six-year-old student in an after-school enrichment program sustained a head injury, staff members withheld this knowledge from his mother. The delay in medical treatment led to the child's sustaining permanent brain and vision impairments. An appellate court in North Carolina decided that since staff members in the program undertook a duty that was traditionally provided by local government, they were entitled to immunity to the extent that they were sued in their official capacities. However, the court also posited that the employees could be personally liable for their alleged negligence. ***Schmidt v. Breeden***, 517 S.E.2d 171 [136 Educ. L. Rep. 1063] (N.C. Ct. App. 1999).

Parents of a fifteen-year-old student who committed suicide while truant brought a wrongful death action against their school board and its insurer. An appellate court in Wisconsin affirmed that even if the district had a duty to notify the parents of the truancy or follow up on a tip from another student, the suicide was an intervening cause that was too remote to render the district liable. ***McMahon v. St. Croix Falls Sch. Dist.***, 596 N.W.2d 875 [136 Educ. L. Rep. 568] (Wis. Ct. App. 1999).

In another case, parade sponsors settled a spectator's personal injury claims for burns caused by a fire that started in a can of liquid used to ignite the batons of marching band members. The sponsors had sought indemnification from a school board. The Supreme Court of Florida determined that the sponsors could not recover on a claim of common-law indemnity as there was no special relationship between them and the board. ***Dade County Sch. Bd. v. Radio Station WQBA***, 731 So. 2d 638 [135 Educ. L. Rep. 268] (Fla. 1999).

A student who was injured in a fight with another child off school property and after classes ended sued her district over her injuries. Citing the principle that a student who removes herself from school grounds may no longer look to the board for protection, an appellate court affirmed the

dismissal of her action. ***Youngs v. Bay Shore Union Free Sch. Dist.***, 686 N.Y.S.2d 444 [133 Educ. L. Rep. 1008] (N.Y. App. Div. 1999).

A twelve-year-old student sustained burns when his friend started a fire in a school shed. The injured student's mother unsuccessfully sued the district for damages. On appeal, the Supreme Court of Maine affirmed that since the student appreciated the dangers involved, there could be no recovery under the theory of attractive nuisance. ***Collomy v. Sch. Admin. Dist. No. 55***, 710 A.2d 893 [126 Educ. L. Rep. 1062] (Me. 1998).

A sixth-grade student was raped after she was given permission to leave the park where a class field trip was taking place. The supervising teacher left the park without the student and without notifying the school or the police. However, he did stop by the student's house to tell her mother she was missing before returning to school. The student's unsuccessful action against the school board was reversed, with the New York court finding the rape a foreseeable result of the danger created by the school's failure to supervise the outing. ***Bell v. Bd. of Educ. of N.Y.***, 665 N.Y.S.2d 42 [122 Educ. L. Rep. 1031] (N.Y. App. Div. 1999).

Parents sued a district after their son died as a result of injuries he sustained during the course of a spontaneous football game in a school yard. An appellate court affirmed a grant of summary judgment in favor of the board, explaining that it did not have the duty to supervise activity that took place prior to the start of the school day. ***Phillipe v. City of N.Y. Bd. of Educ.***, 678 N.Y.S.2d 662 [129 Educ. L. Rep 1136] (N.Y. App. Div. 1998).

Parents challenged an adverse grant of summary judgment in their negligence and wrongful death action against a school district and a teacher after their son was shot and killed by a fellow pupil off school premises. An appellate court in Arizona affirmed that neither the district nor teacher breached a statutory duty or created an unreasonable risk to the deceased student by failing to discipline the pupil who eventually shot him to death. The court declared the act so unforeseeable that it could not have imposed a duty on the district to discipline students for conduct away from school. ***Hill v. Safford Unified Sch. Dist.***, 952 P.2d 754 [124 Educ. L. Rep. 721] (Ariz. Ct. App. 1997).

A student who was severely and permanently injured in a fight with another student on a public sidewalk in front of their neighboring schools unsuccessfully sued his own school. The sole issue on appeal was whether the plaintiff's school and/or its administrators owed him a duty of supervision during non-class hours when students are not on the school's premises or otherwise involved in school-related or -sponsored activities. An appellate court in Florida affirmed that there was no such duty because this would have essentially made school officials insurers of all students' safety until they returned home each day. ***Concepcion v. Archdiocese of Miami***, 693 So. 2d 1103 [118 Educ. L. Rep. 1243] (Fla. Dist. Ct. App. 1997).

A high school student who was rendered a quadriplegic due to an after-school, off-premises fight with a classmate appealed a grant of summary judgment in favor of the district in his negligent supervision suit. The Supreme Court of Kansas affirmed on the basis that there was no relationship between the district and the student that would have imposed a duty of care on it even though the school had a policy of imposing suspension for such fights. ***Beshears v.Unified Sch. Dist. No. 305***, 930 P.2d 1376 [115 Educ. L. Rep. 1074] (Kan. 1997).

School Settings During School Hours

Parents sued a school board, alleging a violation of section 1983 under the "state-created danger" doctrine. A federal trial court held the school not liable for the injuries allegedly suffered by the student as a result of being the target of other students' teasing and physical abuse. There was no showing the student's harm was the foreseeable result of the school's action or inaction. Nor did the defendants willfully disregard the problem when they became aware a dangerous condition existed. ***Nordo v. Sch. Dist. of Phila.***, 172 F. Supp. 2d 600 [159 Educ. L. Rep. 138] (E.D. Pa. 2001).

A high school student brought an action under section 1983 and state law asserting an assistant principal used excessive force against her. The Third Circuit ruled for the school district and administrator on the section 1983 claim and remanded an assault and battery claim to state court. The court ruled that the student failed to present a direct connection between any practice of the school board and her injury since the alleged pushing, which occurred after the student was brought to the office following an altercation, was not a "seizure," but was reviewable under the "shocks the conscience" standard of the Due Process Clause. ***Gottlieb ex rel. Calabria v. Laurel Highlands Sch. Dist.***, 272 F.3d 168 [159 Educ. L. Rep. 16] (3rd Cir. 2001).

Where a sixteen-year-old student was injured when he was assaulted in class by a peer, an appellate court reversed a grant of summary judgment in favor of the school board. The court was convinced that there were material issues of fact as to whether the teacher was presented with a potentially dangerous situation and failed to take energetic steps to intervene. ***Wojtowicz v. Dexter Terrace Elementary Sch.***, 732 N.Y.S.2d 527 [158 Educ. L. Rep. 789] (N.Y. App. Div. 2001).

An appellate court in New York reinstated a jury verdict in favor of a seventh-grade student who was injured when he tripped over the leg of teacher who was monitoring the halls between classes. The court reversed a post-trial motion to dismiss because it was satisfied that there was a prima facie case of negligent supervision since a parent of

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ordinary prudence would not have tried to stop the child by tripping him. At the same time, the court reduced the damages awarded as excessive, lowering the amount for past pain and suffering from $150,000 to $85,000 and future pain and suffering from $305,000 to $165,000. ***Gonzalez v. City of N.Y.***, 730 N.Y.S.2d 154 [156 Educ. L. Rep. 1279] (N.Y. App. Div. 2001).

The mother of a first-grade student brought an action for damages against her son's teacher, principal, and school district, alleging the teacher continuously mistreated, harassed, and physically abused her son over the course of one year. The court upheld the defendants' exception of prescription. The incidents alleged were found immediately knowable by the mother and to be discrete, separate events which did not constitute a continuing tort. ***Woods v. St. Charles Parish Sch. Bd.***, 790 So.2d 696 [156 Educ. L. Rep. 356] (La. Ct. App. 2001).

An Indiana appellate court reversed judgment for an Archdiocese and school in a case where a student was assaulted by a classmate. The injured child's parents brought the suit and were granted summary judgment by the trial court. The reversal was predicated on the improper admission of an affidavit from the parents alleging a breach by the school of its duty to exercise ordinary and reasonable care for the child's safety. To satisfy the requirements of summary judgment, affidavits should substantially follow the same form as if the affidavit were giving testimony in court. A completely unstricken affidavit was found to create genuine issues of material fact warranting the remanding of the case for further proceedings. ***McClyde v. Archdiocese of Indianapolis***, 752 N.E.2d 229 [155 Educ. L. Rep. 1336] (Ind. Ct. App. 2001).

A New York court found a student a willing and active participant in an incident where he was struck in the eye by a stick thrown by a fellow student. That holding relieved the school district from liability related to negligent supervision of students during lunch recess. At the time of the incident, up to eighty students were being supervised in a large field by one monitor. However, where an accident occurs in such a short period of time that even the most intense supervision could not have prevented it, and where negligence on the part of the school was not the proximate cause of the injury, the court found summary judgment for the school is warranted. ***Janukajtis v. Fallon***, 726 N.Y.S.2d 451 [154 Educ. L. Rep. 912] (N.Y. App. Div. 2001).

A sixth-grade student alleged the injury she incurred when pushed into the wall in a school hallway by a fellow student caused her to suffer from seizures over a period of several years. Her action against the school board alleged negligent supervision. The court held the breach of duty to supervise was not the cause of the incident and the resulting injuries; therefore, there was no liability on the part of the school board. ***Jackson v. Madison Parish Sch. Bd.***, 779 So.2d. 59 [152 Educ. L. Rep. 425] (La. Ct. App. 2001).

A Kentucky teacher claimed his act of chaining a high school student to a tree was a light-hearted prank to impress upon a student the importance of staying in class and finishing his assignments. The student's action against the teacher alleged false imprisonment, assault and battery, and outrage. A directed verdict for the teacher was appealed, with the court finding the teacher was not entitled to the findings on the claims of false imprisonment and assault and battery for the loss of time, physical discomfort, and mental suffering inflicted on the student. Neither of these intentional torts required proof of damages for at least a nominal award. The court found sufficient proof of emotional damages to justify submitting the issue to a jury. ***Banks v. Fritsch***, 39 S.W.3d 474 [152 Educ. L. Rep. 379] (Ky. Ct. App. 2001).

A middle school teacher was accused of assault and battery, negligence, and intentional infliction of emotional distress in connection with corporal punishment she inflicted on a student overheard repeating profanity. A trial court found for the student and awarded damages. An appellate court affirmed that to the extent that the teacher's discretion to inflict corporal punishment removed her actions from the scope of discretionary immunity, there was sufficient evidence that she acted with legal malice. ***Hinson v. Holt***, 776 So. 2d 804 [151 Educ. L. Rep. 343] (Ala. Ct. App. (1998).

A student sued his school board to recover for injuries he suffered as a result of an altercation with another student in a school hallway. An appellate court held the board was not negligent in its supervision of students. The plaintiff and his fellow student were acquainted for several years before the altercation, and had not previously had a verbal or physical dispute with each other or any other student. Further, the brief and unanticipated altercation occurred spontaneously during a chance meeting between classes. ***Dadich v. Syosset High Sch.***, 717 N.Y.S. 2d 634 [150 Educ. L. Rep. 234] (N.Y. App. Div. 2000).

A student, injured when fellow pupils struck and shattered a glass window panel in which wire mesh was embedded, sued the city board of education to recover damages for personal injury. An appellate court reversed a denial of the board's motion for summary judgment since the spontaneous act of students banging on a window could not lead to a finding of negligence based on an alleged lack of supervision. The court maintained that the teacher's testimony, that every so often a student would bang on the window, did not establish sufficiently specific knowledge or notice to the board that this conduct would result in the splintering of the window. Further, school personnel could not reasonably be expected to guard against all of the sudden, spontaneous acts that take place among students. ***Mitsel v. N.Y. City Bd. of Educ.***, 717 N.Y.S.2d 341 [149 Educ. L. Rep. 870] (N.Y. App. Div. 2000).

The parents of a special education student who was murdered on school grounds by another special education

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student brought a wrongful death action against the district. An appellate court affirmed that the district was not liable since school officials lacked notice that the attacking student was dangerous. The court noted that although the student made threats against a former girlfriend, there was no evidence that this information has been passed on to school personnel. ***Marshall v. Cortland Enlarged City Sch. Dist.***, 697 N.Y.S.2d 395 [139 Educ. L. Rep. 574] (N.Y. App. Div. 1999).

An African American high school student sued her board and school officials, alleging intentional infliction of emotional distress arising from a classroom incident of racial harassment. A federal trial court partially granted the defendants' motion to dismiss in recognizing that the district, school officials, and a teacher were entitled to statutory immunity for negligence and intentional infliction of emotional distress. The court did permit the student's Title VI claim of peer-to-peer harassment to proceed based on the refusal of school officials to act in response to her repeated notification. ***Davison ex rel. Sims v. Santa Barbara High Sch. Dist.***, 48 F. Supp. 2d 1225 [136 Educ. L. Rep. 291] (C.D. Cal. 1998).

A Native American middle school student who was assaulted at school sued the district and school personnel under sections 1983 and 1981. A federal trial court granted the defendants' motion for summary judgment in declaring that an agreement between the student's family and school officials, allowing her to arrive late for class to ensure her safety, did not create a special relationship or give rise to a state-created danger. The court noted that the assault on the student did not serve as a basis for a section 1983 claim absent evidence that school officials were deliberately indifferent to her plight. The court acknowledged that trouble in the student's neighborhood over her heritage did not support the section 1981 claim, and that the individual school employees were statutorily immune from liability for intentional infliction of emotional distress. ***Page ex rel. Page v. Sch. Dist. of Phila.***, 45 F. Supp. 2d 457 [135 Educ. L. Rep. 120] (E.D. Pa. 1999).

In another case, a student sued his school district, seeking damages for the injuries he suffered at the hands of fellow pupils. An appellate court in New York affirmed the denial of the district's motion for summary judgment where the injuries occurred on two occasions when students, in violation of school rules, gathered in corridors without supervision. The court rejected the board's argument that the spontaneous, unanticipated actions of the students were the intervening and superseding causes of the child's injuries. The court was also concerned that there were questions of fact as to whether the district breached its duty to provide adequate supervision for its students, whether it had constructive notice of the dangerous conduct of the students, and whether these factors were the proximate cause of the student's injuries. ***Dean v. Falconer Cent. Sch. Dist.***, 688 N.Y.S.2d 319 [134 Educ. L. Rep. 553] (N.Y. App. Div. 1999).

A private school challenged the denial of its motion for summary judgment where a student sought damages for injuries he received in a fight with a schoolmate. Reversing in favor of the school, an appellate court pointed out that it could not be liable because it did not have actual or constructive notice of prior or similar violent conduct on the part of the offending student. ***Gibiser v. LaSalle Ctr.***, 685 N.Y.S.2d 98 [133 Educ. L. Rep. 223] (N.Y. App. Div. 1999).

A student who was shot in the hall of his high school unsuccessfully filed a negligence action against a city. An appellate court affirmed that the school did not have a special relationship with the student, giving rise to a duty to protect him. Further, the court rejected the student's argument that his being released from class five minutes early was the proximate cause of his injuries. ***Dickerson v. City of N.Y.***, 684 N.Y.S.2d 584 [132 Educ. L. Rep. 875] (N.Y. App. Div. 1999).

When a student sued his school district for failing to prevent an altercation during an orientation program, an appellate court in New York affirmed that the district did not breach its duty of supervision because the fight was unforeseeable. Even though the offending student threatened to begin a fight, the court was not convinced that this was sufficient for the district to anticipate his eventually surprising the victim by hitting him with a "sucker punch." ***Busby v. Ticonderoga Cent. Sch. Dist.***, 684 N.Y.S.2d 709 [132 Educ. L. Rep. 890] (N.Y. App. Div. 1999).

The mother of a student who was attacked and killed in school sued the town, educators, and municipal officials for a failure to maintain security and protect her son. The Supreme Judicial Court of Massachusetts explained that since the defendants did not create a danger when three assailants entered the school and stabbed the student, their inactivity in the face of a known danger did not create liability under section 1983. The court refused to accept the notion that school officials had a due process duty to protect the student from private actors. ***Brum v. Town of Dartmouth***, 704 N.E.2d 1147 [131 Educ. L. Rep. 829] (Mass. 1999).

Where a student was shot and killed in a school hallway by another student, the deceased student's estate challenged a grant of summary judgment in favor of the district in its wrongful death action. An appellate court reversed and remanded in favor of the estate, contending that with only two poorly equipped and trained campus monitors to supervise almost 1,000 students in three halls on three floors, issues of fact precluded summary judgment on whether the district was grossly negligent. The court remarked that the district could not claim immunity under any subsection of the Torts Claim Act unless or until the issue of gross negligence was resolved. ***Etheredge v. Richland Sch. Dist. No. 1***, 499 S.E.2d 238 [126 Educ. L. Rep. 490] (S.C. Ct. App. 1998).

According to an appellate court, the impulsive, unanticipated act of a student hitting another during an argument

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over a cigarette could not be the basis for a negligence action against a school and principal. The court observed that a disciplinary record involving smoking and verbal abuse could not be seen as an indicator that the student might have committed acts of physical violence. ***Kennedy v. Seaford Union Free Sch. Dist. No. 6***, 672 N.Y.S.2d 407 [126 Educ. L. Rep. 407] (N.Y. App. Div. 1998).

The Supreme Court of Connecticut was of the opinion that a school's lack of supervision in the hallway where an eight-year-old student was tripped by another child was sufficient to preclude its motion for immunity. In remanding for trial, the court relied on the imminent harm exception to governmental immunity. ***Purzycki v. Town of Fairfield***, 708 A.2d 937 [125 Educ. L. Rep. 684] (Conn. 1998).

A school board in New York challenged the denial of its motion to dismiss a breach of supervision claim filed by a student who sustained an eye injury when she was hit by part of a combination lock thrown by another pupil. An appellate court reversed in favor of the board on the basis that past anti-social behavior by the first student was too remote in time and insufficiently similar so as to put school personnel on notice that he posed a danger to others in the hallway. Moreover, the court noted that the presence of a hall monitor was unlikely to have prevented the student's action. ***Malik v. Greater Johnstown Enlarged Sch.***, 669 N.Y.S.2d 729 [124 Educ. L. Rep. 1025] (N.Y. App. Div. 1998).

A middle school student who was struck in the eye by a bean unsuccessfully claimed that her injury was caused by a teacher's failure to comply with a school policy requiring all staff to be physically and visibly present in hallways to supervise pupils as they changed classes. An appellate court affirmed that the student did not sufficiently allege facts to bring her claim under the identifiable person imminent harm exception to governmental immunity because the harm was caused by the voluntary, willful act of another child and school officials did not have any knowledge that he possessed beans or would throw them at the plaintiff. ***Bonamico v. City of Middletown***, 706 A.2d 1386 [124 Educ. L. Rep. 944] (Conn. Ct. App. 1998).

A board of education challenged a judgment in favor of a student who was injured in a stabbing incident in his classroom. In reversing in favor of the board, an appellate court failed to find that the actions of the teacher were the proximate cause of the student's injuries. The court decided that, in light of the complete disdain that the intruders showed to the teacher's initial queries and challenge to their presence, and the speed with which the events unfolded, it was irrational to conclude that her actions led to the student's injuries. ***Transon v. Bd. of Educ. of N.Y.***, 659 N.Y.S.2d 102 [119 Educ. L. Rep. 600] (N.Y. App. Div. 1997).

A student who was assaulted by classmates when a teacher was not present in the room challenged a grant of summary judgment in favor of the school system. An appellate court in Alabama affirmed that the educators were entitled to qualified immunity. The court agreed that the principal exercised his discretion in deciding how the teacher's classes were to be covered during her half-day absence by directing her to have her colleagues act as substitutes. Further, the court posited that the teacher who checked on the room did not see any problems or hear any complaints when she questioned the students. ***Foley v. Taylor***, 695 So. 2d 1196 [119 Educ. L. Rep. 743] (Ala. Ct. App. 1997).

A student appealed a grant of summary judgment in favor of her teacher and district officials after she sued to recover for injuries she incurred when assaulted by another pupil. The Supreme Court of Texas affirmed that qualified immunity protected the teacher from personal liability for her actions in preserving classroom discipline. The court recognized that the teacher was not liable because the development and maintenance of a discipline plan required the use of professional judgment and discretion. ***Downing v. Brown***, 935 S.W.2d 112 [114 Educ. L. Rep. 1265] (Tex. 1996).

The parents of a middle school student who was assaulted by classmates after the teacher left the room to attend a faculty meeting sought further review after a trial court granted the district's motion for summary judgment. On further review, an Ohio appellate court affirmed, finding the teacher's decision to leave the students alone was within the scope of her discretionary authority. In addition, the court pointed out that the students previously had worked on their own and had behaved responsibly. ***Marcum v. Talawanda City Sch.***, 670 N.E.2d 1067 [113 Educ. L. Rep. 401] (Ohio Ct. App. 1996).

Sexual Abuse

The Supreme Court ruled that a female fifth grader from Georgia who endured months of verbal and physical harassment from a male classmate may be entitled to a remedy under Title IX for student-on-student sexual harassment. The student, through her mother, alleged that even though the board and school officials had actual knowledge of the harassment, they failed either to investigate or put an end to his behavior. The Court determined that the board, as a recipient of federal funds, may be liable if it acted with deliberate indifference to known acts of harassment which were so severe, pervasive, and offensive that they effectively barred the victim's access to educational opportunity. Further, the Court stated that the board and school officials could be liable where they exercised substantial control over both the harasser and the context in which the known harassment occurred. At the same time, the Court suggested that simple acts of name-calling and teasing, even when based on gender, would not provide a cause for action for sexual harassment under Title IX. ***Davis v. Monroe County Bd. of Educ.***, 526 U.S. 629 [134 Educ. L. Rep. 477] (1999).

Where a high school student in Texas and her mother sought damages under Title IX for a teacher's sexual harassment, the Supreme Court affirmed in favor of the board. In setting the standard necessary for a party to prevail in a Title IX action alleging teacher-student sexual harassment, the Court found that the district could not be liable unless a school official with the authority to institute corrective measures had actual notice of, and exhibited deliberate indifference to, the alleged misconduct. ***Gebser v. Lago Vista Indep. Sch. Dist.***, 524 U.S. 274 [125 Educ. L. Rep. 1055] (1998).

The Fourth Circuit held that the Title IX claim of a student in Virginia who alleged that he was sexually abused by his teacher was recoverable under section 1983. By failing to take appropriate action after being told a former student had been abused by a current teacher fifteen years before, the principal was found to have acted with deliberate indifference. However, the court maintained that since the personnel director and superintendent did not have actual knowledge of the molestation, they were not liable. ***Baynard v. Malone***, 268 F.3d 228 [158 Educ. L. Rep. 19] (4th Cir. 2001).

A Kansas high school student was unsuccessful in his assertion of Title IX and section 1983 claims arising from a two-year sexual relationship with a teacher. The Eighth Circuit held it could not be inferred by a totality of the facts that the school district had notice of the teacher's acts and failed to investigate. Further, the student had hidden the relationship and did not complain of the sexual misconduct until the relationship ended. ***P.H. v. Sch. Dist. of Kan. City***, 265 F.3d 653 [157 Educ. L. Rep. 42] (8th Cir. 2001).

In New York, a student sued her private high school for injuries sustained when she was allegedly sexually assaulted by fellow students during an overseas field trip. The court determined the student could proceed with her action despite the claim that her signed release barred suit. While evidence that the student or her parents had signed a release was lacking, it did not clearly or unequivocally release the school from liability for negligence. However, the court found that material issues remained as to whether the school had sufficient specific knowledge of threats to harm the student during the trip, which precluded summary judgment that the school was liable. The court added that school officials had no intention to inflict emotional harm on the student, nor was their conduct so unreasonable as to endanger the student's physical safety. ***Doe v. Archbishop Stepinac High Sch.***, 729 N.Y.S.2d 538 [156 Educ. L. Rep. 665] (N.Y. App. Div. 2001).

Parents of an elementary school child, sexually abused by his teacher over a five-year period, sued the school board for fraud and, under section 1983, for violation of their constitutional right to parent. The Minnesota federal court granted in part the district's motion for dismissal, finding the federal claim time barred. While section 1983 has no specific statute of limitations, the Minnesota six-year limitation period is applied to section 1983 actions. On the fraud claim that the school had misrepresented the extent of its investigation, the complaint failed to specify the time, place, and contents of allegedly false representations, or the identity of persons making them. Therefore, the district's motion to dismiss that part of the complaint was denied with the parents directed to plead more definite statements of those counts. ***Helleloid v. Indep. Sch. Dist. 361***, 149 F. Supp. 2d 863 [155 Educ. L. Rep. 450] (D. Minn. 2001).

The parents of a mildly retarded middle school student alleged a Texas school board and principal violated Title IX in their response to alleged same-sex harassment of the student by a classmate. The federal court holding for the district found no evidence of deliberate indifference. A single incident was insufficient to trigger district liability where the alleged perpetrator had never done anything to the victim beyond simple bullying. ***Wilson v. Beaumont Indep. Sch. Dist.***, 144 F. Supp. 2d 690 [155 Educ. L. Rep. 220] (8th Cir. 2001).

An eighth-grade student, who alleged she had been the victim of sexual abuse while involved in peer mediation sessions, sought damages through her parents against a superintendent, board of education, and peer mediation coordinator. A trial court granted the defendants' motion for summary judgment. On further review, the Supreme Court of Ohio reversed in noting that the statute that mandated the reporting of known or suspected child abuse, through its criminal penalty to report, expressly imposed liability. ***Campbell v. Burton***, 750 N.E.2d 539 [154 Educ. L. Rep. 924] (Ohio 2001).

An Illinois student, involved as an intern in a work-study program with a local company, brought an action against the company, alleging negligent supervision. The trial court dismissed the complaint, but was reversed on appeal. That court found the inappropriate touching and brushing against the student by an employee to have been known by the company, with no attempts made to correct the conduct. The student was even scheduled to work alone with the offending employee. She was able to state a claim that the company had a "special relationship" with her, and breached the duty of protection it had arising out of that relationship. ***Platson v. NSM, Am.***, 748 N.E.2d 1278 [154 Educ. L. Rep. 625] (Ill. Ct. App. 2001).

The federal trial court in Maine partially denied a motion for summary judgment entered on behalf of a school board, superintendent, and principal where a male student claimed that he was abused by a female teacher. The court posited that there were enough facts to permit a Title IX gender discrimination suit to proceed because school officials had actual notice of the teacher's behavior toward male students even if there were questions of fact as to whether they were deliberately indifferent to her actions. However, the court granted a summary judgment motion on behalf of

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the superintendent and principal on the section 1983 charge since the teacher was not acting under the color of state law when she harassed the student. ***Doe v. Sch. Admin. Dist. No. 19***, 66 F. Supp. 2d 57 [139 Educ. L. Rep. 399] (D. Me. 1999).

A school superintendent in Alabama challenged the denial of his motion for summary judgment in a case involving sexual abuse of a student by her vocational education teacher. Reversing in favor of the superintendent, the Eleventh Circuit held that he was entitled to sovereign immunity in his individual capacity because even assuming that the teacher violated the student's substantive due process right not to be abused, the superintendent did not deprive her of that right. The court also offered that the superintendent was immune from the charge of failing to remedy the teacher's actions since there was no evidence that he committed any prior inappropriate acts. ***Hartley v. Parnell***, 193 F.3d 1263 [139 Educ. L. Rep. 95] (11th Cir. 1999).

Negligent supervision was at issue where a female high school student alleged she was raped by a male student. The Supreme Court of South Carolina affirmed that evidence of the victim's willing participation in the sexual encounter was relevant in her subsequent civil trial for damages but irrelevant and inadmissible on the issue of liability. ***Doe v. Orangeburg County Sch. Dist. No. 2***, 518 S.E.2d 259 [137 Educ. L. Rep. 837] (S.C. 1999).

In a case from Colorado, the mother of a high school student who had physical and mental disabilities filed suit under section 1983 and Title IX when, despite her expressions of concern for her daughter's safety, she was not notified that her daughter was sexually assaulted at school. Further, school personnel told the student to forget that the events ever happened. The Tenth Circuit was satisfied that the mother presented a claim against the district under Title IX for peer-to-peer sexual harassment and against the principal and teachers under section 1983 for violating her daughter's right to equal protection by allegedly refusing to remedy the sexual harassment even though they had actual knowledge of the improper conduct. The court also decided that the mother failed to allege a municipal policy or custom required to maintain an equal protection claim against the district and that the principal and teachers were not entitled to qualified immunity from the section 1983 claim. ***Murrell v. Sch. Dist. No. 1, Denver, Colo.***, 186 F.3d 1238 [137 Educ. L. Rep. 474] (10th Cir. 1999).

A former student from South Dakota unsuccessfully filed suit under Title IX alleging that she was sexually abused by a teacher thirty years earlier. The Eighth Circuit affirmed that Title IX did not apply retroactively despite the former student's having claimed that she did not realize the existence of a potential cause of action until more than twenty years after Title IX was enacted. ***Gross v. Weber***, 186 F.3d 1089 [137 Educ. L. Rep. 470] (8th Cir. 1999).

An appellate court in Texas affirmed that a female middle school student whose leg was touched by a male classmate did not have a section 1983 claim against her district because she was unable to show that it had an official policy or custom permitting such behavior. The court also agreed that the student's Title IX claim could not proceed since the behavior was not severe, pervasive, or offensive enough to have deprived her of any educational opportunity, and that her father's being denied the opportunity to address an open meeting of the board on the matter did not violate his rights under the First Amendment. ***Mosley v. Beaumont Indep. Sch. Dist.***, 997 S.W.2d 934 [137 Educ. L. Rep. 404] (Tex. App. 1999).

A special education student brought a section 1983 action against her teacher and school board after she was raped in a classroom. A federal trial court in Pennsylvania rejected the teacher's motion to dismiss on the basis that the defendants failed to take corrective action following earlier assaults by the same perpetrators. Moreover, the court was of the view that the teacher's statement, "I don't care what you do, as long as you leave me alone" helped to establish the student's claim under the theory of state-created danger. ***Maxwell ex rel. Maxwell v. Sch. Dist. of Phila.***, 53 F. Supp. 2d 787 [137 Educ. L. Rep. 238] (E.D. Pa 1999).

An appellate court affirmed that a school board was liable for gross negligence where a classmate sexually assaulted a female student with a mental disability. The court deemed the assault foreseeable where school officials were aware of another sexual incident that had occurred two weeks earlier. ***Duncan v. Hampton County Sch. Dist. #2***, 517 S.E.2d 449 [136 Educ. L. Rep. 1076] (S.C. Ct. App. 1999).

In Texas, the Fifth Circuit wrote that a teacher's fabrication of sexual abuse by a child's father was so shocking to the contemporary conscience that it violated substantive due process for the purposes of section 1983 liability. Insofar as the teacher's charge led to an investigation and separation for the family for a period of three years and her behavior was not objectively reasonable, the court refused to permit her to use a qualified immunity defense. ***Morris v. Dearborne***, 181 F.3d 657 [136 Educ. L. Rep. 693] (5th Cir. 1999).

In another case, a disruptive student was removed from class because of his behavior, and his parents unsuccessfully sued his private school for assault, battery, and breach of contract. An appellate court affirmed that the school did not abuse its right to discipline the student when the teacher physically removed him from the classroom because the teacher's primary motive was to preserve discipline in order to maintain harmony and promote education. The court asserted that the parents failed to establish the necessary element of damages because they received a refund and an offer to refund their outlay for books and uniforms. ***Frame v. Comeaux***, 735 So. 2d 753 [136 Educ. L. Rep. 640] (La. Ct. App. 1999).

Parents of a third-grade girl who was assaulted on school grounds by older children sued their district for negligent supervision. The Supreme Court of Idaho affirmed that the state's Tort Claims Act shielded the district from liability. The court rejected the parents' claim that since the negligent supervision charge related to their injured daughter rather than the individuals who committed the harm, the district should have lost its coverage under the law's intent to limit liability of governmental entities. ***Coonse v. Boise Sch. Dist.***, 979 P.2d 1161 [135 Educ. L. Rep. 1086] (Idaho 1999).

When a twelve-year-old student alleged that he was sexually harassed by his teacher, an investigation was closed without any action being taken. Nine months after reaching the age of eighteen, the student sought to serve a late notice of claim against the school district. An appellate court in New York affirmed the student's motion to serve the late notice of claim because the district had actual knowledge of the facts giving rise to it and the teacher was still available. ***Scuteri v. Watkins Glen Cent. Sch. Dist.***, 689 N.Y.S.2d 751 [135 Educ. L. Rep. 577] (N.Y. App. Div. 1999).

A mother in Utah filed a section 1983 case against her son's school and others after he was repeatedly subjected to sexual assault by a fellow student. The Tenth Circuit discerned that since the school was an arm of the state for the purposes of the Eleventh Amendment, it waived its right to avoid litigation by voluntarily becoming a party to the action. The court was convinced that while the assaults were tragic, there was no evidence of affirmative acts on the part of the principal which would have allowed a claim for the deprivation of the student's constitutional right to due process. Even so, the court refused to dismiss the claim against the principal under the danger-creation doctrine since he failed to provide adequate training for staff or adopt a policy to prevent repeated sexual assaults. ***Sutton v. Utah State Sch. for the Deaf and Blind***, 173 F.3d 1226 [134 Educ. L. Rep. 697] (10th Cir. 1999).

Parents of a student who was raped in a school locker room brought an action alleging that the district failed to provide adequate supervision, protection, and security, and/or enact or enforce appropriate security policies. An appellate court in Minnesota affirmed that since three employees who saw the intruder before the assault were engaged in discretionary activities, they were entitled to official immunity. The court refused to extend immunity to the district in remarking that this would have rewarded it for not developing and implementing basic security policies for use under the circumstances. ***S.W. v. Spring Lake Park Sch. Dist. No. 16***, 592 N.W.2d 870 [134 Educ. L. Rep. 566] (Minn. Ct. App. 1999).

A former student sued her school district over the conduct of a teacher with whom she had a sexual relationship. An appellate court affirmed that the board's decisions as to the method, manner, and extent of investigation of an anonymous tip were policy judgments entitled to discretionary immunity. ***Doe v. Park Ctr. High Sch.***, 592 N.W.2d 131 [134 Educ. L. Rep. 307] (Minn. Ct. App. 1999).

A former high school student in Georgia sued her private school and a teacher under Title IX and state law for sexual abuse. The Eleventh Circuit affirmed that while Title IX was applicable because the school's tax-exempt status constituted federal financial assistance, the suit was properly barred as not being filed in a timely manner since it was more than eight years after the former student reached the age of majority, at which time her claim became subject to a two-year limitation period. ***M.H.D. v. Westminster Schs.***, 172 F.3d 797 [133 Educ. L. Rep. 774] (11th Cir. 1999).

When a student in Nebraska alleged the existence of a hostile environment that allowed sexual harassment to exist, she sued her district, school officials, and a teacher under section 1983 and Title IX. The Eighth Circuit decreed that the student failed to make the necessary showing that school officials acted with deliberate indifference once they were on notice of the teacher's harassment. The court concluded that the teacher could not be sued in her individual capacity under Title IX, but that the student could sue her individually under section 1983, alleging violations of her Fourteenth Amendment rights. ***Kinman v. Omaha Pub. Sch. Dist.***, 171 F.3d 607 [133 Educ. L. Rep. 418] (8th Cir. 1999).

In Tennessee, a ten-year-old student successfully filed a Title IX claim for sexual abuse by fellow students where she was assaulted twenty to thirty times and both she and her parents informed school officials of the attacks. The court refused to allow the board of education to be sued separately from the metropolitan government under state law claims. ***Haines v. Metro. Gov't of Davidson County***, 32 F. Supp. 2d 991 [132 Educ. L. Rep. 357] (M.D. Tenn. 1998).

After a volunteer art teacher sexually molested a student while off school premises, the child sued the board of education for failure to supervise. An appellate court, reversing in favor of the board, ruled that the principal's failure to complete a background check on the volunteer, which was not a part of school policy, could not serve as the basis for a cause of action for negligent hiring. In addition, the court observed that the school's granting the volunteer permission to work with students was not the proximate cause of the child's injury. ***Koran I. v. N.Y. City Bd. of Educ.***, 683 N.Y.S.2d 228 [132 Educ. L. Rep. 170] (N.Y. App. Div. 1998).

In a case from New York, the Second Circuit affirmed in favor of a school board, assistant superintendent, and teacher who were sued under Title IX for alleged student-on-student sexual harassment. The court agreed that the school officials had qualified immunity since they lacked actual knowledge of the harassment. The court's observation that the trial judge failed to provide the jury with a sufficiently inclusive list of individuals who had a copy of the notice of harassment was insufficient to require a rever-

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sal in favor of the defendants. ***Bruneau ex rel. Schofield v. S. Kortright Cent. Sch. Dist.***, 163 F.3d 749 [131 Educ. L. Rep. 593] (2nd Cir. 1998).

Students from Texas who were allegedly sexually molested by a teacher of the same sex unsuccessfully filed suit under Title IX. On further review, the Fifth Circuit reversed in pointing out that even though the teacher and students were of the same sex, the pupils had stated a claim under Title IX. However, the court affirmed a grant of summary judgment in declaring that the district had not delegated policy-making authority to the principal and that its failure to adopt an official sexual abuse policy did not support a claim of municipal liability. ***Black v. Dallas Indep. Sch. Dist.***, 153 F.3d 211 [128 Educ. L. Rep. 1005] (5th Cir. 1998).

The Seventh Circuit reversed and remanded after a trial court in Indiana issued jury instructions which were incorrect statements of the law. At trial, a student sued her school board for sexual harassment and abuses in violation of her rights under Title IX. The court held that the thirteen-year-old plaintiff, who was considered an elementary school student under state law, could not welcome the advances of a twenty-one-year-old school employee. ***Mary M. v. North Lawrence Cmty. Sch. Corp.***, 131 F.3d 1220 [122 Educ. L. Rep. 980] (7th Cir. 1997).

A teenager and her mother alleged that a teacher/coach had enticed the girl into a homosexual relationship. They also claimed that the teacher/coach aided and abetted such a relationship between the girl and a school bus driver. A Louisiana appellate court reversed an earlier decision finding that the girl was 10 percent at fault because the relationships were consensual. In relying on expert opinion that it is not possible for a child to give consent, the court concluded that the teacher/coach and bus driver were each 50 percent at fault. ***Landreneau v. Fruge***, 676 So. 2d 701 [111 Educ. L. Rep. 582] (La. Ct. App. 1996).

Negligent Hiring

Parents sued to recover damages for the sexual molestation of their son by a teacher formerly employed by a Nebraska school district. Liability by the district was alleged under section 1983 and Title IX. The Eighth Circuit held entering into a confidential agreement with the teacher and providing him with a neutral letter of recommendation, rather than terminating him outright, did not rise to the level of deliberate indifference so as to warrant liability under section 1983. The record reflected the superintendent did not have actual knowledge of the teacher's misconduct and police and school investigations were inclusive. Any alleged cover-up by the superintendent did not create a direct link between the abuse and his scope of control and thus there could be no liability under Title IX. ***Shrum ex rel. Kelly v. Kluck***, 249 F.3d 773 [153 Educ. L. Rep. 600] (8th Cir. 2001).

In Illinois, a federal trial court rejected a board's motion for summary judgment where there were sufficient questions of facts surrounding allegations that high school students had sexual relations with a teacher. According to the court, while there was no evidence that the board had actual knowledge of the sexual relationships, they were not entitled to immunity since there were sufficient facts to warrant a jury determination as to whether they turned a blind eye to the teacher's conduct. The court denied the board's motion as to the section 1983 claim based on the possibility that the board's policies or practices facilitated the abuse. The court ascertained that before hiring the teacher, school officials knew that he had divorced his wife to marry a recent graduate and former student with whom he may have had an inappropriate sexual relationship. ***Doe v. Bd. of Educ. of Consol. Sch. Dist. 230***, 18 F. Supp. 2d 954 [130 Educ. L. Rep. 184] (N.D. Ill. 1998).

Where elementary school students alleged that they were deprived of a variety of constitutional rights in connection with their being sexually abused by a teacher, a federal trial court in Texas partially rejected the defendants' motions for summary judgment. The court was satisfied that there were unresolved questions of fact regarding whether the teacher's actions were offensive, arbitrary, capricious, and unrelated to the goal of maintaining a learning atmosphere. However, in asserting that neither the principal nor board had knowledge of the teacher's activities, the court granted their motions for summary judgment. ***Doe v. Beaumont Indep. Sch. Dist.***, 8 F. Supp. 596 [128 Educ. L. Rep. 215] (E.D. Tex. 1998).

An elementary school student filed suit under section 1983 alleging deliberate indifference by school officials after she was molested by a substitute teacher. The court denied the district's motion for summary judgment in observing that there were questions of fact as to whether it expressly delegated final decision-making authority to the superintendent. The court further reflected that while the policy of not requiring criminal background checks for substitute teachers did not violate any statutory right that the student enjoyed, questions remained as to the existence and adequacy of school policies concerning the reporting of negative incidents involving substitute teachers. ***Mirelez v. Bay City Indep. Sch. Dist.***, 992 F.Supp. 2d 916 [125 Educ. L. Rep. 111 (S.D. Tex. 1998.)

Students in Georgia who were sexually assaulted by a school security guard challenged a grant of summary judgment in favor of the district in their Title IX action. The Eleventh Circuit affirmed that the board was not liable as there was no evidence that it or the superintendent had knowledge of the guard's misconduct and failed to act. The court added that the guard's alleged practice of taking female students to an abandoned house was not a custom supporting section 1983 liability. ***Floyd v. Waiters***, 133 F.3d 786 [123 Educ. L. Rep. 51] (11th Cir. 1998).

A teacher's section 1983 action against the superintendent for alleged sexual assaults and harassment was dismissed by a federal trial court in Wisconsin. On appeal, the Seventh Circuit reversed, agreeing that the teacher established a substantive due process claim against the superintendent in light of her liberty interest in bodily integrity since he threatened to take adverse employment action against her if she refused his sexual advances. ***Wudtke v. Davel***, 128 F.3d 1057 [122 Educ. L. Rep. 85] (7th Cir. 1997).

Where a four-year-old preschooler was sexually assaulted by another preschooler of the same age in a school restroom, his mother challenged a grant of summary judgment in favor of the school. An appellate court in Tennessee affirmed that while the school owed the student a duty of reasonable care, sexual assault between two four-year-old boys was so unforeseeable that there was no duty to guard against it. ***Roe v. Catholic Diocese of Memphis***, 950 S.W.2d 27 [120 Educ. L. Rep. 854] (Tenn. Ct. App. 1997).

A student sued both the administrator who sexually molested her while she was a thirteen-year-old in middle school and the district where the administrator previously worked. The student claimed that the first district was at fault because the positive letter of recommendation that the administrator received failed to disclose that he had been disciplined for alleged sexual misconduct with pupils. The Supreme Court of California affirmed that the writer of the a letter of recommendation owes prospective employers and third persons a duty not to misrepresent the facts in describing an applicant's qualifications and character if doing so would present a substantial, foreseeable risk of physical injury to the employer or third parties. The court also stated that the student did not have to rely on the first district's misrepresentations but only had to show that her injuries were caused by her school's reliance on the letter of recommendation. ***Randi W. v. Muroc Joint Unified Sch. Dist.***, 929 P.2d 582 [115 Educ. L. Rep. 502] (Cal. 1997).

In Texas, a board appealed the denial of its motion to dismiss a suit filed on behalf of a thirteen-year-old girl who was raped and assaulted by a custodian in a classroom after school. Even though the custodian had a criminal record, the district failed to perform a background check on him. Reversing in favor of the board, the Fifth Circuit acknowledged that compulsory attendance laws did not create a special relationship requiring school officials to protect students from private actors. The court added that the child's parents did not demonstrate that school officials placed the child in a dangerous situation and that the district's failure to check the custodian's background was not the nexus between the rape and assault that would have been necessary to establish its liability for the child's injuries. ***Doe v. Hillsboro Indep. Sch. Dist.***, 113 F.3d 1412 [118 Educ. L. Rep. 834] (5th Cir. 1997).

In Illinois, a student who was sexually abused by a school bus driver sued the district and the company that employed the driver. Following a jury verdict that the defendants were not liable for negligent supervision and hiring, the student sought further review. An appellate court affirmed, reasoning that the only thing the district and bus company could have known was that the driver had a tendency to be late and that there was neither a factual nor a logical relationship between this information and the attack on the student. ***Giraldi v. Cmty. Consol. Sch. Dist. #62***, 665 N.E.2d 332 [110 Educ. L. Rep. 269] (Ill. App. Ct. 1996).

En Route to and from School

In Connecticut, a school board sought indemnification from a bus company for amounts it paid to settle claims arising from the death of a child who was struck by a school bus. An appellate court affirmed that the board was entitled to compensation not only because its negligence in the management and supervision of the bus company was passive but also since the company's negligence was the direct cause of the accident. ***City of Bristol v. Dickau Bus Co.***, 779 A.2d 152 [156 Educ. L. Rep. 1161] (Conn. Ct. App. 2001).

The Eighth Circuit examined a dispute where a motorist in Minnesota was injured in a collision with an automobile driven by a student who was traveling between two high schools in different districts. The court affirmed a grant of summary judgment in favor of both school boards on the basis that they did not owe the motorist a duty of care since he was a member of the general public and their officials had no knowledge that the student was anything but an average licensed driver. ***Gylten v. Swalboski***, 246 F.3d 1139 [153 Educ. L. Rep. 35] (8th Cir. 2001).

Parents of a seven-year-old child who was struck and killed while waiting for a school bus challenged a grant of summary judgment in favor of the school board and various officials. An appellate court in Georgia affirmed as to the board on the ground of sovereign immunity since it had not waived this defense by purchasing liability insurance to cover damages arising out of the ownership or operation of a school bus. The court also affirmed as to the transportation director since his actions relating to the supervision, control, and monitoring of student safety were discretionary. ***Brock v. Sumter County Sch. Bd.***, 542 S.E.2d 547 [152 Educ. L. Rep. 316] (Ga. Ct. App. 2000).

The mother of a high school student sued a school board and various officials for damages incurred by her son in a fight that took place after he departed his school bus. An appellate court modified a judgment that the board was completely at fault. The court held that in not following board policies for preventing a fight where they had advance notice there was a problem, their actions placed the board 20 percent at fault. The three students who administered the beating were each liable for 25 percent liable while the injured student was 5 percent at fault for not informing the bus driver of the threats made against him. As the three

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students who were 75 percent liable were voluntarily dismissed from the suit before trial by virtue of not having reached the age of majority, the court increased the board's liability to 50 percent under the principle of solidary liability. ***Frazer v. St. Tammany Parish Sch. Bd.***, 774 So.2d 1227 [150 Educ. L. Rep. 577] (La. Ct. App. 2000).

Where a child was injured when she was struck by an automobile when crossing a highway in an attempt to catch up with her bus, an appellate court affirmed a grant of summary judgment in favor of the school board. The court held the common carrier doctrine did not apply as the child was not boarding, traveling aboard, or disembarking the bus at the time of the accident. The bus was not even in sight or close proximity when the child crossed the highway. The court added that the driver's failure to wait for the child to exit her home did not serve to expand the protected zone of passage. ***Amos v. St. Martin Parish Sch. Bd.***, 773 So. 2d 300 [150 Educ. L. Rep. 303] (La. Ct. App. 2000).

A female high school student, who claimed she was not informed after-school band practice had been canceled, accepted a ride with fellow students. Instead of being driven home, she and another girl were sexually assaulted. Her action for damages against the school board resulted in summary judgment for the board. In her appeal, the Louisiana court focused only on the school's duty of protection. While it could not be determined whether the failure of the girls to be aware of the canceled practice was their fault or that of the school, the judgment for the board did not turn on that issue. Even if the school breached its duty in not providing supervision, the scope of the duty owed must be determined. Where the girl willingly accepted a ride from a driver she knew, even if there had been supervision at that time, it would not have been reasonable for a school official to perceive a danger. Further, the school has no control or authority over that which happens off school grounds. ***Frederick v. Vermilion Parish Sch. Bd.***, 772 So. 2d 208 [149 Educ. L. Rep. 943] (La. Ct. App. 2000).

A high school student who was sexually harassed on a school bus challenged the denial of her motion to file a late notice of claim. An appellate court affirmed that while charitable immunity precluded the student's negligence claim against the school, it did not protect the principal or prevent the student from filing a third-party action against the township and board of education for indemnification. ***S.P. v. Collier High Sch.***, 725 A.2d 1142 [133 Educ. L. Rep. 183] (N.J. Super. Ct. App. Div. 1999).

Parents of a second-grade student, who was dropped off early by his school bus driver and died as a result of injuries that he suffered while attempting to enter his house through a window, filed a negligence action. The Supreme Court of Ohio concluded that while the district waived its right to statutory immunity, a genuine issue of material fact existed as to whether the driver violated the statute prohibiting school bus drivers from starting their buses until after the children leaving them have reached places of safety. ***Turner v. Cent. Local Sch. Dist.***, 706 N.E.2d 1261 [132 Educ. L. Rep. 909] (Ohio 1999).

As they were stepping off a city bus, a male student broke the jaw of a female classmate with whom he had an earlier altercation. The board and transit authority challenged a judgment in favor of the injured student's mother. An appellate court modified in ascertaining that the district was 10 percent at fault based on its poor documentation of the prior incidents and the fact that the female had informed school officials of earlier threats. The court placed 20 percent of the blame on the transit authority because the driver ordered the students to leave the bus. The court concluded that the student who committed the assault was 60 percent at fault while the injured student was liable for 10 percent based on her behavior in the incident. ***Wijngaarde v. Parents of Guy***, 720 So. 2d 6 [130 Educ. L. Rep. 956] (La. Ct. App. 1998).

Where a student was struck by an automobile after leaving his school bus as the driver signaled that it was safe to cross, his parents unsuccessfully sued the district. The Supreme Court of Pennsylvania reasoned that the motor vehicle exception to governmental immunity did not apply to the actions of the bus driver since the accident occurred as he attempted to supervise the student rather than in operating the bus. ***White by Pearsall v. Sch. Dist. of Phila.***, 718 A.2d 778 [129 Educ. L. Rep. 1115] (Pa. 1998).

A Georgia student unsuccessfully sued his school district, assistant principal, and bus driver for injuries she sustained after being attacked with a knife by a fellow student. An appellate court affirmed that the defendants were entitled to official immunity. The court indicated that since the actions of the assistant principal and bus driver in investigating the student's complaint that another child threatened her with a knife were discretionary rather than ministerial, they were entitled to immunity. ***Payne v. Twiggs County Sch. Dist.***, 501 S.E.2d 550 [127 Educ. L. Rep. 448] (Ga. Ct. App. 1998).

A board that was sued by the mother of a child who was sexually assaulted as he rode on a school bus challenged the denial of its motion to dismiss her claim. An appellate court in Illinois decreed that the district was immune from liability because the bus that was transporting the child to special education classes outside the district was not operating as a common carrier for the purposes of the common carrier exception to the state's Tort Immunities Act. ***Doe v. Rockdale Sch. Dist. No. 84***, 679 N.E.2d 771 [119 Educ. L. Rep. 567] (Ill. Ct. App. 1997).

High school students who were stabbed while riding home on the subway challenged the dismissal of their case against a transit authority and board of education for failure to provide police protection on trains that were part of its "Safe Passage" program. An appellate court reversed in holding that the students stated a claim against the transit

authority by alleging the existence and breach of a special duty. At the same time, the court affirmed the dismissal against the board because it did not owe the students such a duty. ***Reyes v. City of N.Y.***, 656 N.Y.S.2d 379 [117 Educ. L. Rep.1092] (N.Y. App. Div. 1997).

Foreseeability was the primary issue in a case from Georgia where a student was attacked by a classmate who wielded a hammer. In fact, the injured student and his sister had been threatened by the assailant following an earlier altercation on their school bus. An appellate court upheld a grant of summary judgment on behalf of the district based on sovereign immunity. The court also indicated that since the threats had not been reported to school officials, a finding of negligence was precluded because the attack was not reasonably foreseeable. ***Rawls v. Bulloch County Sch. Dist.***, 477 S.E.2d 383 [113 Educ. L. Rep. 1328] (Ga. Ct. App. 1996).

Employees

A teacher in Louisiana prevailed in her defamation and intentional infliction of emotional distress against the mother of a student who claimed that she grabbed, and injured, her son's arm based on the mother's having described the incident to a parent volunteer who answered a school phone because the principal was not available. The court agreed that the mother's words to the volunteer were defamatory since there was no evidence that they were true, she intended to injure the teacher's reputation, expose her to public ridicule, and deprive her of public confidence in her occupation. ***Huxen v. Villasenor***, 798 So. 2d 209 [158 Educ. L. Rep. 909] (La. Ct. App. 2001).

Where the office of workers' compensation limited its award to a teacher who was injured when assaulted by a student, an appellate court in Louisiana reversed in her favor. The court decided that the teacher was entitled to workers' compensation and assault pay benefits as long as their total did not exceed her pre-injury salary. ***Anderson v. Orleans Parish Sch. Bd.***, 792 So. 2d 943 [156 Educ. L. Rep. 1455] (La. Ct. App. 2001).

A teacher who was injured when he was pushed by a student as they were on an overnight camping trip unsuccessfully sued the campground. An appellate court affirmed a grant of summary judgment in favor of the campground in agreeing that the owners did not owe the teacher a common-law duty to provide extra supervision for the student group. ***Ahmadi v. Greater N.Y. Councils, Inc.***, 724 N.Y.S.2d 408 [153 Educ. L. Rep. 943] (N.Y. App. Div. 2001).

A school custodian sued a city for injuries he received when shot by an unidentified man who forced his way inside the school after the custodian opened the main door. An appellate court reversed the denial of the city's motion for summary judgment on the basis that absent the showing of a special duty to the janitor, the city could not be liable. The court pointed out that the alleged negligence did not stem from the city's failure to fulfill its proprietary duties as owner or lessee of the building, but instead involved the governmental function of implementing security measures. ***DiGravina v. City of N.Y.***, 717 N.Y.S.2d 633 [150 Educ. L. Rep. 233] (N.Y. App. Div. 2000).

Where a female janitor sued her school, head custodian, assistant principal, and principal, alleging sexual harassment, a federal trial court denied the defendants' motions to dismiss since there were material issues of fact as to whether a hostile work environment was present and whether the janitor was discriminated against in retaliation for making the charges. The court also ascertained that the janitor's failure to name the assistant principal in the claim precluded a section 1983 suit against him in his individual, but not official, capacity. ***McLaughlin v. Rose Tree Media Sch. Dist.***, 52 F. Supp. 2d 484 [136 Educ. L. Rep. 843] (E.D. Pa. 1999).

When a student on a school bus threatened a fellow pupil with physical violence, the bus driver removed both children at the next stop and called the principal. When the bus driver re-entered the bus to move it out of the path of traffic, the first student carried through with the assault. An appellate court in Louisiana found the driver 15 percent at fault while the assaulting student was liable for the remaining 85 percent. The court also rejected the student's action against the board for failure to supervise since the common carrier doctrine no longer applied once she was safely delivered to the school grounds. ***Bell v. Ayio***, 731 So. 2d 893 [135 Educ. L. Rep. 1112] (La. Ct. App. 1998).

A hospital employee brought a personal injury action against a board of education when she was assaulted by a child in the hospital's day treatment program. An appellate court noted that although the board provided on-site teachers, it was not liable because it did not have custody or control of the child at the time of the assault. ***Meyers v. Bd. of Educ. of N.Y.***, 688 N.Y.S.2d 623 [134 Educ. L. Rep. 995] (N.Y. App. Div. 1999).

A former school instruction supervisor filed suit in a sexual harassment claim under Title VII and section 1983 charges against her district, superintendent, and principal. A federal trial court rejected the defendants' motions for summary judgment because there were material issues of fact as to whether the principal's actions created a hostile work environment, whether there was quid pro quo harassment when the principal conditioned a job title change on the performance of sexual favors, whether district officials knew or should have known of the harassment and failed to take action, and whether the district was vicariously liable for supervisor harassment resulting in tangible employment action. The court found that the supervisor's Title VII claim was not time barred since she alleged that the one event of harassment took place within the 180-day filing period was part of a continuous and related string of events. ***Gibson v.***

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Hickman, 38 F. Supp. 2d 1369 [134 Educ. L. Rep. 114] (M.D. Ga. 1999).

An estate in Michigan sued a school bus driver and director of transportation when a child died after being hit by a car at a school bus stop. At issue on appeal was whether the trial court erred in its application of comparative negligence to the child's estate. An appellate court contended that the estate waived further review of the trial court's alleged error because its counsel did not want a jury instruction regarding comparative negligence and was only concerned with the percentage of the negligence that the estate bore. ***Dedes v. Asch***, 590 N.W.2d 605 [133 Educ. L. Rep. 581] (Mich. Ct. App. 1999).

A teacher sued her school board under Title VII alleging the existence of a hostile work environment, sexual harassment, and failure to promote. A federal trial court in Florida was of the opinion that the teacher established a prima facie case of hostile work environment based on the principal's behavior but refused to hold the board vicariously liable for his behavior. The court determined that the teacher failed to take advantage of preventative opportunities provided by the board under its anti-harassment policy and complaint procedures. ***Masson v. Sch. Bd. of Dade County***, 36 F. Supp. 2d 1354 [133 Educ. L. Rep. 489] (S.D. Fla. 1999).

Where a physical education teacher playfully tossed a football to a school secretary, striking her in the jaw, a trial court granted the teacher's motion for summary judgment. An appellate court in Florida affirmed that since tossing the ball was not willful and wanton conduct, the teacher was entitled to state employee immunity. ***Castellano v. Raynor***, 725 So. 2d 1197 [133 Educ. L. Rep. 273] (Fla. Dist. Ct. App. 1999).

A reading teacher filed a claim for workers' compensation benefits alleging that her vocal cords were injured by continuous poor ventilation in the room where she taught. An appellate court agreed that the claim was not an occupational disease since it did not arise from the general nature of her employment, but was specific to the room in which she taught. At the same time the court reversed the denial of her request for benefits since she suffered a compensable accidental injury. ***In re Leventer***, 684 N.Y.S.2d 658 [132 Educ. L. Rep. 883] (N.Y. App. Div. 1999).

A teacher brought a negligence action against a police officer and a city for injuries she sustained when the temporary trailer in which she was teaching was struck by a city police car. According to the Supreme Court of Rhode Island, the police officer was not entitled to any deduction from damages caused by his negligence by reason of sums paid to the teacher through her disability pension. ***Gelsomino v. Mendonca***, 723 A.2d 300 [132 Educ. L. Rep. 156] (R.I. 1999).

A non-teaching employee for the Maryland Board of School Commissioners sued the board, alleging sexual harassment in violation of Title IX. The federal court granted the board's motion for summary judgment because the staff member failed to show that the alleged harassment was sufficiently severe or pervasive to affect a term or condition of her employment. ***Francis v. Bd. of Educ. of Sch. Comm'r of Baltimore City***, 32 F. Supp. 2d 316 [132 Educ. L. Rep. 131] (D. Md. 1999).

Where an administrator sued a city board of education and school officials for injuries she incurred from an assault by the father of a student, a trial court in New York granted the defendants' motion for summary judgment. The court observed that the defendants did not have an affirmative duty to protect the administrator even though the father allegedly disregarded a protective order she obtained against him. The court was satisfied that any breach of the school's duty to protect the administrator did not endanger her or cause her to fear for her safety. ***Johnson v. N.Y. City Bd. of Educ.***, 676 N.Y.S.2d 444 [128 Educ. L. Rep. 822] (Sup. Ct. 1998).

A school system in Virginia appealed a ruling in favor of a female school psychologist who claimed that she was the victim of sexual harassment and retaliation in violation of Title VII. The Fourth Circuit reversed in deciding that assigning the psychologist extra work did not constitute tangible employment action sufficient to impose liability on the district for sexual harassment by her supervisor. ***Reinhold v. Commonwealth of Va.***, 151 F.3d 172 [128 Educ. L. Rep. 588] (4th Cir. 1997).

In Indiana, an insurance company sought further review of its obligation to cover a teacher who was injured in an after-school fight between her son and another student that took place at her home. In denying the claim, an appellate court reversed because the fight, although an outgrowth of activities during the school day, was outside of the scope of the policy's coverage. The court cited the teacher's role in the altercation, namely encouraging her son to hit another student with a baseball bat, as not characteristic of an employee who was motivated to serve her employer. ***Horace Mann Ins. Co. v. Richards***, 696 N.E.2d 65 [126 Educ. L. Rep. 1120] (Ind. Ct. App. 1998).

A teacher who was assaulted by a student with an emotional disability sought further review of the denial of her request to serve a late notice of claim. An appellate panel affirmed that the trial court did not abuse its discretion in the face of the teacher's allegation that she was unable to think, consider, and make meaningful decisions after the attack. The court pointed out that the teacher was able to travel to Italy one month after the event and that there was no evidence the department of social services had actual knowledge of the incident within a reasonable time. ***Howard v. Dep't of Soc. Servs.***, 660 N.Y.S.2d 485 [126 Educ. L. Rep. 1101] (N.Y. App. Div. 1998).

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Where a school security guard was injured after being attacked by a stray dog while at work, the district unsuccessfully argued that the unexplained assault presented an issue of fact for trial. An appellate court in Illinois affirmed an award of benefits in favor of the guard in deciding he was clearly on school grounds to protect its property when he was injured. ***Springfield Sch. Dist. No. 186 v. Indus. Comm'n***, 687 N.E.2d 334 [123 Educ. L. Rep. 306] (Ill. Ct. App. 1997).

The husband of a Pennsylvania day care teacher who was shot and killed while in her classroom challenged the dismissal of his section 1983 action against the district from which the center leased space. Among other allegations, the suit claimed that there was a state-created danger present since ongoing school construction work resulted in an improperly secured back door that led to previous instances of vandalism and a prior assault. The Third Circuit affirmed that there was no state-created danger where there was mere negligence coupled with no indication that school officials placed the teacher in a foreseeable situation of harm. ***Morse v. Lower Merion Sch. Dist.***, 132 F.3d 902 [122 Educ. L. Rep. 1178] (3rd Cir. 1997).

Parents sought further review of the denial of their motion for summary judgment when the teacher of their homebound child sued them for negligent supervision after their son assaulted the teacher. An appellate court reversed in favor of the parents. The court found that there was no evidence that the parents had knowledge of their son's tendency to engage in violent conduct prior to his assaulting the teacher. ***Decker v. Chamberlain***, 652 N.Y.S.2d 175 [115 Educ. L. Rep. 64] (N.Y. App. Div. 1997).

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Nineteenth Series

Assaults on School Personnel

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Assaults on Faculty & Staff

A city board of education and its subpoena compliance clerk were held in civil contempt for disregarding a subpoena compelling submission of the personnel records of a paraprofessional claiming to have been sexually abused by the defendant teacher. Noncompliance with the subpoena necessitated four adjournments. ***People v. Simplice***, 733 N.Y.S.2d 855 [159 Educ. L. Rep. 727] (N.Y. Crim. Ct. 2001).

Because the events complained of were not sexual in nature, a female teacher's allegations that a male principal and security personnel physically assaulted her by grabbing and twisting her wrist and shoving a piece of paper in her eye were insufficient to state a sexual harassment claim under Title VII. Even if the principal's alleged assault of the teacher could be considered sexual harassment, the school could not be held liable where the plaintiff failed to follow procedures outlined in the school's published sexual harassment policy. ***Howard-Ahmad v. Chi. Sch. Reform Bd. of Trs.***, 161 F. Supp. 2d 857 [157 Educ. L. Rep. 588] (N.D. Ill. 2001).

A teacher who was assaulted by one of her students and injured in the scope of her employment received worker's compensation benefits from the school district's insurance carrier, as well as assault pay from the school board. Roughly seven years after it started paying workers' compensation benefits, the insurance carrier discontinued the benefits, asserting that it was entitled to an offset because the school district's assault pay was a disability benefit, not sick leave which could supplement workers' compensation benefits. After the state office of workers' compensation found for the insurance carrier, the teacher and school district appealed. In reversing, the state appellate court held that the plain language of the state's assault pay statute demonstrated that assault pay was sick leave; therefore, the insurance carrier was not entitled to the offset and the teacher was entitled to both benefits as long as they did not exceed her pre-injury salary and/or earnings. ***Anderson v. Orleans Parish Sch. Bd.***, 792 So. 2d 943 [156 Educ. L. Rep. 1455] (La. Ct. App. 2001).

The mother of a high school student, who was expelled for allegedly conspiring to shoot targeted administrators and students, brought a section 1983 action against the school board and individual members for deprivation of due process. The court held that the student was given sufficient due process in connection with expulsion proceedings. He was informed in advance of the evidentiary hearing, and of the charges against him. He was also given the opportunity to explain his position and present evidence at the hearing. His procedural due process rights were not violated when the principal, who was a target of the alleged conspiracy, presented evidence of wrongdoing to the school board. There was no evidence of partiality by the board of decision makers. ***Remer v. Burlington Area Sch. Dist.***, 149 F. Supp. 2d 665 [155 Educ. L. Rep. 419] (E.D. Wis. 2001).

A junior high school home economics teacher discovered rat poison and straight pins in her iced tea glass and pitcher that was placed there by one or more students. As a direct result of the incident, she suffered from post-traumatic stress disorder, depression, anxiety, and hypertension. Once her sick leave was exhausted, she was informed she had no choice but to retire. Eventually her disability retirement from the state retirement system was approved. In the teacher's suit against the school district, the trial court awarded her paid leave of absence and accrued sick leave, less the amount of her disability retirement income. The court of appeals reversed, holding that under the "collateral source" rule, the retirement disability payments could not be deducted from her damage award because it was not paid by the school board, but from a third-party collateral source. ***Moore. v. Pulaski County Special Sch. Dist.***, 43 S.W.3d 204 [153 Educ. L. Rep. 989] (Ark. Ct. App. 2001).

A female band teacher escorted a twelve-year-old male student to the principal's office after he disrupted class. In the hallway, the student hit the teacher with his fists several times. A coach had to wrap his arms around the student and gently take him to the ground in an effort to keep him from leaving school. The student threatened the coach with a beating by a parent, and said that if he could, he would kill him. The school board expelled the student for the remainder of the school year, but the trial court overturned the board's decision. An appellate court reversed, holding that the trial court erred in finding that the board abused its discretion in expelling the student. Where there was evidence before the board based on violence and threats that occurred in the hallway and on school grounds, and where school records indicated that the student had forty-one disciplinary write-ups prior to this incident, the expulsion decision was justified. ***Wynne Pub. Sch. v. Lockhart***, 32 S.W.3d 47 [149 Educ. L. Rep. 628] (Ark. Ct. App. 2000).

A substitute teacher, who was attacked in school by an intruder, alleged that the defendants were negligent in failing to provide adequate security. The court held that preventing security attacks in schools by intruders is a governmental function involving policymaking regarding the nature of the risks presented, and that no liability arises from the performance of such a function absent a special duty of protection. The court granted the board's motion for summary judgment because it determined that in this case, no special duty of protection existed. The record showed no affirmative promise of protection, and the defendant's mere implementation of security measures at the school did not give rise to a special duty. ***Bain v. N.Y. City Bd. of Educ.***, 702 N.Y.S.2d 334 [No Educ. L. Rep. Cite] (N.Y. App. Div. 2000).

After a parent who assaulted an assistant principal at a school function was criminally prosecuted, the educator obtained an order of protection, which was disseminated to the school administrative staff. In spite of the order, the parent was permitted to enter the school office to pick up his son who had been injured during physical education class.

When the assistant principal discovered the parent's visit several days later, she sued the school board for failing in its special duty regarding the protective order. The court dismissed the complaint holding that because the plaintiff was not aware of the parent's visit until well after the fact, her claims of emotional distress were remote and speculative. ***Johnson v. N.Y. City Bd. of Educ.***, 704 N.Y.S.2d 281 [142 Educ. L. Rep. 474] (N.Y. App. Div. 2000).

Two teachers employed at the same school engaged in a one-year consensual sexual affair. After the relationship ended, the male teacher claimed that the female teacher began harassing him at school with threats and physical abuse. The male teacher brought a claim against the school board for failure of school personnel to remedy the hostile work environment. In granting the defendant's motion for summary judgment, the court noted that generally an employer cannot be held liable for sexual harassment when a supervisor/employee consensual relationship ends and the resulting harassment is not gender-based. The court ruled that the employee/employee relationship was even less worthy of protection in the same context. ***Succar v. Dade County Sch. Bd.***, 60 F. Supp. 2d 1309 [138 Educ. L. Rep. 427] (S.D. Fla. 1999).

A student was suspended for three days for allegedly threatening to kill her guidance counselor when the counselor refused to modify the student's class schedule. The student claimed that in frustration she merely said she could shoot someone. She sued, alleging that the suspension violated her First Amendment right to free speech, as well as the state education code providing that a student has the same right to exercise free speech on campus as off campus. The district court agreed, holding that the school district overstepped its bounds when it suspended the student. Her statement did not constitute the requisite threat required by law. The court of appeals reversed, holding that the First Amendment does not protect threats of physical violence in any forum. It did not matter that the statement was made by a student in the school context. Recognizing the prevalence of violence in schools today, the court stated that teachers and administrators must take threats by students very seriously. ***Lovell v. Poway Unified Sch. Dist.***, 90 F.3d 367 [111 Educ. L. Rep. 116] (9th Cir. 1996).

A special education teacher challenged the school district's decision to place her on involuntary partial medical leave after she received a traumatic brain injury as the result of a student assault. The student pushed the teacher, causing her to fall and strike her head. The court ruled that being placed on involuntary medical leave does not implicate statutory or constitutional due process rights associated with termination or demotion. ***Palmer v. Indep. Sch. Dist. No. 917***, 547 N.W.2d 899 [109 Educ. L. Rep. 941] (Minn. Ct. App. 1996).

A student who was suspended for fighting with a peer, screaming obscenities, assaulting faculty members, and hitting the principal who tried to restrain her, filed suit alleging that she was deprived of procedural due process when she was suspended after a phone conversation between the principal, herself, and her mother. The Eleventh Circuit affirmed the rejection of the student's argument that she was deprived of due process since she was appraised of the charges against her and given a chance to present her side of the story. ***C.B. ex rel. Breeding v. Driscoll***, 82 F.3d 383 [108 Educ. L. Rep. 1126] (11th Cir. 1996).

A tenured high school teacher refused to change a student's grade as requested by the student's father. Subsequently, the student harassed the teacher by running into him, hitting him, and disrupting class. The problems escalated when the student was caught putting chalk dust on the teacher (who was allergic to chalk dust), and the teacher reacted by grabbing the student by the neck and pushing him against the chalkboard. The student's father threatened to bring criminal charges against the teacher, but agree not to if the teacher resigned. The teacher was temporarily suspended and told that the school board would not support him because the incident had occurred in full view of the class. The board informed the teacher that if he did not resign he would be fired. He then wrote a resignation letter that stated that he had, through instinctive behavior, acted in an unacceptable manner and, as a result, become ineffective as a teacher. After his dismissal, the teacher filed suit alleging breach of contract. The trial court granted the board's motion to dismiss the case. The appellate court affirmed, holding that the teacher had terminated the contract himself when he submitted his voluntary resignation in order to avoid the dismissal process and its consequences, as well as to avoid criminal charges. ***Johnson v. Vernon Parish Sch. Bd.***, 670 So. 2d 373 [108 Educ. L. Rep. 470] (La. Ct. App. 1996).

The parents of an ADHD student unilaterally decided to stop administering a drug to the student that reduced his aggressive behavior. Subsequently, he assaulted his teacher by pulling her to the floor by the hair, injuring her neck. In a suit filed by the teacher against the parents, the court held that parents were negligent for not informing school personnel of their decision to discontinue the medication. Their failure to do so prevented a plan from being developed to manage the child's behavior, which was a substantial factor in causing the teacher's injury. ***Nieuwendorp v. Am. Family Ins. Co.***, 529 N.W.2d 594 [98 Educ. L. Rep. 412] (Wis. 1995).

Assaults on Students by School Personnel

Sexual Assault

A high school teacher directed sexually inappropriate comments, initially during a discussion group and later in class, to a female student. On one occasion when he visited the student at her home on the pretext of giving her a book, he kissed and fondled her. The relationship culminated

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when the teacher and student had sexual intercourse. The student never reported the incidents to school officials, but her parents did complain about the sexually inappropriate remarks. The principal warned the teacher to be careful about what he said and informed the school guidance counselor about the meeting, but never reported the parental complaints to the superintendent. The teacher was arrested after a police officer discovered the couple having sex. The school district terminated the teacher's employment and his teaching license was revoked. The student and her mother filed suit seeking money damages under Title IX. The Supreme Court held that a school district could not be held liable under Title IX for money damages if a teacher sexually harasses a student, unless a school official who has the authority to institute corrective measures has actual notice of, and is deliberately indifferent to, a teacher's sexual misconduct. Since the board acted appropriately under the circumstances, the suit was dismissed. ***Gebser v. Lago Vista Indep. Sch. Dist.***, 524 U.S. 274 [125 Educ. L. Rep. 1055] (1998).

A high school student, who was shot and seriously injured in an attack by two other students in the school library, brought an action against the school district, principal, and other school officials alleging willful and wanton conduct and violations of section 1983. In dismissing the case, the court held that the student's claim for willful and wanton misconduct was barred under the state governmental immunity act. The allegations failed to state a claim under state common law, which imposed no duty on school officials to protect the student from harm by third parties. Further, the student failed to establish the existence of either a special relationship or state-created or -enhanced danger as required to prove that school officials owed a duty to protect her from the actions of her attackers. The plaintiff did not show that the school district or school officials committed a constitutional violation, or that failure of the district or its policy makers to create or implement policies or training practices, rather than the conduct of the attackers, was the moving force behind her injuries. ***Ruegsegger v. Jefferson County Sch. Dist. R-1***, 187 F. Supp. 2d 1284 [162 Educ. L. Rep. 796] (D. Colo. 2001).

A fourth-grade student was sexually abused by his teacher, both in the classroom after school, and off school premises. After discovering the abuse, the child's mother reported it to the county youth services agency, which, in turn, reported the abuse to the school district. Two to three years prior to the incident, another parent had complained to the school principal about suspected abuse by the teacher. The principal, apparently too busy to handle the complaint, directed the parent to the school counselor. The jury returned a verdict against the school district under Title IX, but found the principal was not liable under section 1983. On appeal, the court affirmed the trial court's denial of the defendants' motion for a judgment as a matter of law on the Title IX claim. However, because it was not clear from the verdict slip whether the jury found the principal or the guidance counselor to be the "appropriate person" who had actual knowledge of the abuse and exhibited the deliberate indifference necessary for liability under Title IX, the appellate court reversed the trial court's denial of the defendants' motion for a new trial. ***Warren ex rel. Good v. Reading Sch. Dist.***, 278 F.3d 163 [161 Educ. L. Rep. 75] (3d Cir. 2002).

The supervisor of a high school in-school suspension program was convicted of two counts of sexual misconduct with a minor student. The court of appeals reversed and remanded the case for a new trial. The state committed a *Brady* violation by failing to disclose information concerning prior sexual conduct committed by the victim. Also, the probative value of evidence from three witnesses that the defendant had engaged them in conversations of a sexual nature, and had requested nude photographs from two of the witnesses, was outweighed by its prejudicial effect. ***Turney v. State***, 759 N.E.2d 671 [159 Educ. L. Rep. 761] (Ind. Ct. App. 2001).

A former teacher was initially suspended without pay and ultimately dismissed after he was arrested and charged with sexual assault and other sex-related crimes he allegedly committed in his home against an eighteen-year-old male former student. He brought suit alleging breach of contract, failure to provide notification of COBRA benefits, and violation of due process. The court granted the defendants' motion for summary judgment on all claims. The district's written notice to the plaintiff that his termination would be recommended to the school board was sufficient to place him on notice of his rights. He was advised in writing of the cause for the termination and of his right to request a hearing with the board of education, or to utilize the grievance procedure in the collective bargaining agreement. The school district acted reasonably in discharging the teacher for immorality upon his arrest, and was not required to await conviction to be relieved of its COBRA duties. ***McKnight v. Sch. Dist. of Phila.***, 171 F. Supp. 2d 446 [159 Educ. L. Rep. 64] (E.D. Pa. 2001).

The parents of an elementary school student who was sexually abused by his teacher alleged that the defendant school district intentionally deceived them by falsely professing that it had fully investigated and reported allegations of sexual abuse that had been voiced by the student when, in fact, no investigation had been conducted at all. The court held that the plaintiffs' section 1983 claim was time barred by a six-year statute of limitations. The claim began to run eight years previously, when the teacher pled guilty to criminal sexual contact with the student, rather than on the later date when a school official admitted failure to investigate the allegations. The teacher's conviction, confirming the child's earlier reports of abuse, imposed a duty on the parents to investigate the school's conduct. In any event, the section 1983 action alleging violation of their constitutional right to parent claim was meritless, as the school's alleged misconduct was not directed at the parents' relationship

with their child. ***Helleloid v. Indep. Sch. Dist. No. 361***, 149 F. Supp. 2d 863 [155 Educ. L. Rep. 450] (D. Minn. 2001).

A plaintiff alleged that while she was an elementary school student, she was sexually abused by a teacher. The court held that the student's assertions that the teacher touched her bare chest, kissed and nibbled her, and held her against his body, stated a due process claim under section 1983 based on the teacher's alleged sexual abuse. During the three-year period when the teacher allegedly engaged in the sexually inappropriate conduct, educators were on notice that they were under a constitutional duty not to violate the bodily integrity of their students. The court concluded that, therefore, the teacher was not protected by qualified immunity. ***Hinkley v. Baker***, 122 F. Supp. 2d 48 [149 Educ. L. Rep. 407] (D. Me. 2000).

A high school administration discovered that the women's track coach had been secretly videotaping members of the female track team in various stages of undress in the locker room, and that the videotaping had been occurring over the last five years. The coach, two years prior to the secret videotaping, had admitted videotaping the female track students with their approval, in various poses, in different track uniforms, and in remote areas of the school. School officials investigated the previous instances, and concluded that the coach had done nothing inappropriate or objectionable, although he was ordered to modify his behavior with the female students. Upon hearing of the administration's discovery of the secret videotaping, a female member of the track team brought a section 1983 action against the school board alleging that the school's lack of action resulted in the deprivation of her constitutional rights to bodily security and personal privacy. The trial court entered an award of compensatory damages against the school district, and the board appealed. The state supreme court reversed, finding that as a matter of law the retention of the coach following the earlier investigation was insufficient to establish that the school board caused the student's constitutional rights to be violated. Although the board may have been negligent, its actions did not rise to the level of deliberate indifference to constitute a violation of constitutional rights. ***School Bd. of Portsmouth v. Colander***, 519 S.E.2d 374 [138 Educ. L. Rep. 558] (Va. 1999).

An eighth-grade student was subjected to indecent physical and sexual assault, including forcible sexual intercourse, by a coach. She was subsequently the victim of insults, taunts, and physical harassment by fellow students. The student and her parents brought state tort claims and a section 1983 action against the school district and school administrators, alleging that they had actual knowledge of the harassment by the coach and the students, but failed to take action to prevent or stop it. The court held that Title IX is not so comprehensive as to foreclose remedies under section 1983. The state tort claims against the defendants for breach of duty by employing the teacher, for failure to investigate or report allegations that he had previously assaulted other females, and for negligent infliction of emotional distress for failure to prevent or mitigate harassment by other students were dismissed. The defendants had not caused the teacher or students to harass the plaintiff. Although some of the teacher's conduct occurred on school grounds, it was not done within his scope of employment. ***Doe v. Old Rochester Reg'l Sch. Dist.***, 56 F. Supp. 2d 114 [137 Educ. L. Rep. 611] (D. Mass. 1999).

A male coach allegedly had improper sexual contact with, and raped, a seventh-grade female student. Although the coach's conduct was reported to school officials and they had knowledge of his history of sexual improprieties, he remained in his employment and continued to sexually harass and abuse the student both on and off school property for the next two years. The court held that the school district was not immune from liability for punitive damages under Title IX. Because the coach's conduct was outside the scope of his employment, a state tort claim cause of action could not be maintained against the district based on the intentional or negligent misconduct of the coach. Although under liberal federal notice pleading standards, the plaintiffs sufficiently alleged actual notice on the part of the defendants to state a section 1983 cause of action, availability of relief under Title IX preempted their section 1983 claim. ***Canty v. Old Rochester Reg'l Sch. Dist.***, 54 F. Supp. 2d 66 [137 Educ. L. Rep. 246] (D. Mass. 1999).

Two fourth-grade students complained that a teacher draped his arm over their shoulders with his hand touching their chest area. The conduct occurred in the hallway, and there was no evidence that the teacher massaged or fondled the students. The teacher moved for summary judgment, arguing that this type of touching did not rise to the level of sexual abuse that "shocked the conscience" in order to violate substantive due process. In denying the motion, the court stated that it felt uncomfortable "gauging social norms" of whether touching a girl's breasts was shocking to the conscience. It would do so only after hearing all the evidence. ***Doe v. Beaumont Indep. Sch. Dist.***, 8 F. Supp. 2d 596 [128 Educ. L. Rep. 215] (E.D. Tex. 1998).

A former male student, who had allegedly been sexually abused by a male teacher at least fifteen years previously, brought an action against various school officials, the teacher, and the teacher's family. The court held that a material issue of fact as to when the plaintiff could have reasonably known that the conduct of the school officials was a cause of the injury precluded summary judgment on the question of whether the state three-year statute of limitations had run. ***Armstrong v. Lamy***, 938 F. Supp. 1018 [113 Educ. L. Rep. 641] (D. Mass. 1996).

High school female students and their parents brought an action against the board of education, school superintendent, principal and counselor, alleging negligent supervision, negligent hiring, failure to report assaults, and false imprisonment arising out of a male teacher's alleged sexual

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assault of youngsters in his locked office. The court of appeals held that the two students failed to demonstrate that the defendants violated their duty to provide a safe school environment and to protect students from harm while under their care and custody by allowing the teacher to change the lock to his office door without maintaining a duplicate key. The alleged failure of school officials to supervise the locked office was not the proximate cause of the students' injuries. ***Doe A. v. Coffee County Bd. of Educ.***, 925 S.W.2d 534 [111 Educ. L. Rep. 569] (Tenn. Ct. App. 1996).

Male elementary school students brought an action against the board of education and various school officials, alleging that the defendants were liable under a supervisory theory for their failure to prevent and stop a male third-grade teacher from sexually abusing them. On the defendants' motion for summary judgment, the court ruled that the individual defendants could not be held personally liable under Title IX. The plaintiffs could not bypass this prohibition by bringing a separate claim under section 1983 for a violation of Title IX. The plaintiffs failed to point to specific incidents and dates supporting their underlying claims of sexual abuse. However, in the interest of justice, the court allowed them to supplement their evidence in opposition to summary judgment. Based on the absence of any factually similar controlling case law, the defendants were entitled to qualified immunity on the plaintiffs' substantive due process claim for failure to prevent and stop sexual abuse, and on the claim based on inadequate policies and training. ***Does v. Covington County Sch. Bd. of Educ.***, 930 F. Supp. 554 [111 Educ. L. Rep. 265] (N.D. Ala. 1996).

A male student who was allegedly the victim of criminal sexual attack by a teacher brought a civil rights action against the teacher, a guidance counselor, and the school district. Where the only evidence the counselor knew of the teacher's sexual assaults on children consisted of a report of an incident that took place at least three years after the alleged assault on the plaintiff, the counselor did not knowingly fail to take actions to prevent harm to the plaintiff, nor did he implement a policy so as to repudiate the plaintiff's constitutional rights. Genuine issues of material fact as to whether the school district's prior failure to prevent sexual molestation of its students was a policy of the district precluded granting summary judgment. The district had no policy whatsoever regarding the reporting of suspected incidents of sexual abuse of students, had never instructed its employees in the techniques of recognizing the warning signs of sexual abuse, and had never provided its staff with guidelines for dealing with such suspicions. The district was not entitled to statutory immunity for acts committed in the exercise of official discretion regarding a claim that the district negligently hired, retained, and supervised a teacher whose alleged criminal sexual attack on a student was outside the scope of his employment. ***Knackert ex rel. Doe v. Estes***, 926 F. Supp. 979 [110 Educ. L. Rep. 171] (D. Nev. 1996).

Excessive Discipline

A middle school student filed a personal injury suit against a teacher who touched him on the shoulder and allegedly pulled a chair out from under him causing him to fall. The teacher stated that she was acting in response to disruptive behavior in an adjoining classroom supervised by a substitute teacher, where the student was banging a chair on the wall. The court granted the teacher's motion for summary judgment. In the absence of any evidence that she acted with actual malice or intent to injure, the teacher was entitled to official immunity. The court decided that the teacher was simply exercising her discretionary authority to monitor, control, and supervise the children in her school, after hearing the disruption in a neighboring class. ***Butler v. McNeal***, 555 S.E.2d 525 [159 Educ. L. Rep. 799] (Ga. Ct. App. 2001).

A mild to moderately retarded ten-year-old student was not deprived of substantive due process when his homeroom teacher made him clean a toilet with his bare hands. The teacher's conduct was not sufficiently excessive, demeaning, and inhumane as to rise to the level of conscious-shocking. She was not inspired by malice or sadism, but by her mistaken belief that the student had intentionally clogged the clean toilet with paper. Even if the teacher's actions had deprived the student of substantive due process, she would have been entitled to qualified immunity because she did not violate a clearly established constitutional right. ***Harris v. Robinson***, 273 F.3d 927 [159 Educ. L. Rep. 533] (10th Cir. 2001).

Following a verbal altercation with another student, a female high school student was brought to the assistant principal's office. The principal pushed her shoulder with his hand, propelling her into the door jam and injuring her lower back. In granting the defendants' motion for summary judgment on the plaintiff's section 1983 suit, the court found that the principal's pushing of the student did not amount to a "seizure" so as to be reviewable under a reasonableness standard; rather the student's claim of excessive force was reviewable under the "shocks the conscience" standard of substantive due process. Although no clear objective was served by the principal pushing the student, because of the "slight nature" of the push and testimony that the principal did not intend to injure the student, his conduct did not so "shock the conscience" as to rise to the level of a constitutional violation. ***Gottlieb v. Laurel Highlands Sch. Dist.***, 272 F.3d 168 [159 Educ. L. Rep. 16] (3d Cir.2001).

An elementary school principal did not violate the substantive due process rights of a student when she administered corporal punishment by striking him with a paddle, twice on his buttocks and once on his leg, as he turned to avoid being paddled. The punishment was inflicted only after the student had accumulated a specified number of points for misbehavior. Although the student objected to administration of the punishment, efforts were made to contact his parents before the paddling occurred, and the

principal had no malice toward the student. The alleged failure of the principal to comply with the school requirement that other students act as witnesses to corporal punishment was insufficient to support a claim that her conduct violated due process. ***Fox v. Cleveland***, 169 F. Supp. 2d 977 [158 Educ. L. Rep. 638] (W.D. Ark. 2001).

An appellate court affirmed an arbitration award reinstating a sixth-grade teacher who had been discharged for physically and verbally abusing his students on multiple occasions. The Supreme Judicial Court of Massachusetts vacated the award because the arbitrator exceeded the statutory authority granted him when he substituted his own judgment as to proper discipline for that of the school district after he found that the district had sustained its burden of proving that the teacher had engaged in "conduct unbecoming a teacher," one of the statutorily enumerated bases on which teachers with professional teacher status could be dismissed. ***School Dist. of Beverly v. Geller***, 755 N.E.2d 1241 [157 Educ. L. Rep. 830] (Mass. 2001).

A parent claimed that her elementary school-aged son was mistreated, harassed and physically abused by the tortuous conduct of the child's teacher. The school board filed an exception of prescription seeking to have all of the teacher's alleged misconduct that occurred over a year prior to the filing of the suit excluded from consideration. An appellate court affirmed in favor of the board in rejecting the parent's continuing tort claim. Most of the actions complained of, such as the teacher squeezing the student's arm and pushing him into his desk and reprimanding him for fighting with other students, were incidents where the student was disciplined for classroom misbehavior for which the parent disagreed or felt the grounds were fabricated. The alleged incidents did not rise to the level of a pattern of outrageous conduct by the teacher against the student as to elevate the individual events into a tort greater than its parts. Therefore, each of the alleged incidents was to be treated as a separate tort. As the tort was not continuous, the alleged torts that occurred over one year prior to the filing of the suit had tolled. ***Woods v. St. Charles Parish Sch. Bd.***, 790 So. 2d 696 [156 Educ. L. Rep. 356] (La. Ct. App. 2001).

An eighth-grade student brought a section 1983 action alleging that her constitutional rights were violated when her gym teacher allegedly pushed her into an equipment closet and twisted her wrist, following an incident in which she found a $20 bill lying on the floor, which the teacher claimed was his. The court held that an issue of material fact as to whether the gym teacher's forcible confinement of the student in a storage closet was reasonable under the circumstances precluded granting summary judgment on the student's Fourth Amendment claim. The teacher's alleged grabbing and twisting of the student's wrist in an effort to compel her to turn over the $20 bill did not so shock the conscience of the court as to state a claim for violation of substantive due process. ***Bisignano v. Harrison Cent. Sch. Dist.***, 113 F. Supp. 2d 591 [147 Educ. L. Rep. 529] (S.D.N.Y. 2000).

The parents of four middle school students alleged that their children were excessively disciplined after the students were given no more than two "licks" with a wooden paddle. The students' misconduct leading to the punishment ranged from talking in class, throwing paper at trash cans and missing, being tardy, and going to the restroom. In upholding the defendants' disciplinary action, the court ruled that reasonable corporal punishment is not at odds with the Fourteenth Amendment, does not constitute arbitrary action, and does not violate any civil or criminal laws. ***Johnson v. Resendez***, 993 S.W.2d 723 [135 Educ. L. Rep. 859] (Tex. App. 1999).

A teacher's employment was terminated because of "unprofessional conduct." The school district alleged five specific instances that constituted the unprofessional conduct, including wrapping a student in an extension cord, use of physical force, and publicly humiliating the student. The plaintiff asserted that the termination hearing violated his right to procedural due process because he was not provided with a summary of the nature of the testimony, and that hearsay testimony was admitted over his objection. In reversing the trial court's decision, the court ruled that the teacher was not constitutionally entitled to a summary of the witnesses' testimony against him. The relevant state statute specifically provided that only the names of the witnesses need be supplied to the defendant. The court ruled that hearsay testimony could be admitted at this type of hearing, but given little weight. Regarding the sufficiency of the evidence to constitute unprofessional conduct, the court determined that the teacher either admitted to the specific instances, or else there was sufficient evidence to determine that the conduct was in violation of the teacher handbook or policy manual. ***Johanson v. Bd. of Educ. of Lincoln County Sch. Dist. No. 1***, 589 N.W.2d 815 [132 Educ. L. Rep. 916] (Neb. 1999).

A middle school student alleged that he was choked and restrained by his teacher. His teacher asserted that the student was a discipline problem, and after she asked him to look at her and he refused, she grasped his face and turned him toward her. The student brought suit alleging the teacher violated state law governing corporal punishment, and the principal failed to enforce school policy and take action against the teacher. The trial court granted summary judgment for the defendants. The court of appeals affirmed, finding that the teacher's action did not constitute corporal punishment, and that the teacher and principal's actions were discretionary in nature entitling them to official immunity. ***Daniels v. Gordon***, 503 S.E.2d 72, [128 Educ. L. Rep. 909] (Ga. Ct. App. 1998).

After a high school teacher reprimanded a student who was late for class, the student said something "disrespectful" to the teacher. The teacher then struck the right side of the student's chest with his index finger and the knuckles of his closed fist. In the student's personal injury suit, the court held that under the state tort claims act, a teacher is entitled to immunity, except in circumstances when he uses exces-

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sive force to discipline a student. However, the teacher was granted summary judgment because the student failed to exhaust his administrative remedies. ***Grimes v. Stringer***, 957 S.W.2d 865 [123 Educ. L. Rep. 380] (Tex. App. 1997).

Placing an eighth-grade student in a holding cell for misbehaving during a class tour of a county detention center for a period of seven minutes until the teacher insured the safety of other students amounted to a de minimis deprivation of liberty, and therefore did not implicate either procedural or substantive due process guarantees. The punishment was within the range of discretion afforded school officials, and bore a rational relationship to the goal of providing a valuable and safe educational experience for the other children. ***Tucker ex rel. Harris v. County of Forsyth***, 921 F. Supp. 325 [108 Educ. L. Rep. 1139] (M.D.N.C. 1996).

Four students and their parents sued a school board, teachers, and principals, alleging excessive discipline in administering corporal punishment. One student received an injury to her hand and wrist as she tried to deflect a swat; one was allegedly held down and threatened with severe bodily injury while she received a paddling; and one was allegedly grabbed by the throat and scratched while discipline was attempted. A fourth student allegedly was administered corporal punishment in disregard of written instructions to school officials by his parents that he not to be spanked. The court of appeals held that under the state tort claims act, judgment for the district precluded any claims against its employees when they were acting within the course and scope of their employment. ***Bell v. Love***, 923 S.W.2d 229 [No Educ. L. Rep. Cite] (Tex. App. 1996).

Students Assaulting Students

Physical Assault

An eighth-grade female student wrote a two-page letter threatening another female student. Even though the threatened youngster had not seen the letter, the school board's decision to expel the student for the remainder of the school year for violating the school handbook rule prohibiting students from threatening other students was not an abuse of discretion. ***Cross County Sch. Dist. v. Spencer***, 58 S.W.3d 406 [159 Educ. L. Rep. 351] (Ark. Ct. App. 2001).

Plaintiffs brought a section 1983 action alleging that school officials violated their children's substantive due process rights under the "state-created danger" doctrine by failing to protect the children from other students on three separate occasions. The first incident occurred after school on the playground where a mentally disabled female elementary student was harassed and assaulted by other students. The second involved a male student who came to her assistance, and was also assaulted. Three days later, the female student's eye was bruised during recess as she stopped to tie her shoe and another student bumped into her. On a later date, the male student was spit on while standing in the hallway near a water fountain by a boy who was trying to spit on a third student, and was punched by the boy as they returned to class. Neither the eye incident nor the water incident involved the same boys from the playground assault. The court granted the defendants' motion for summary judgment. The male student failed to satisfy the "harm" and "forseeability" elements of the "state-created danger" test. The spitting incident and the after-school altercation were too dissimilar and unrelated to support the argument that the defendants should have taken measures to protect the student after the first incident, or that their failure to do so forseeably resulted in the second incident. The female student's claims were also dismissed because they failed to establish the forseeability element and the "willful disregard" prong. The after-school playground incident and the eye injury during recess were not sufficiently similar to be foreseeable. There was no evidence that the defendants acted with willful disregard for, or deliberate indifference to, the student's safety after they became aware that a dangerous condition existed. ***Nordo v. Sch. Dist. of Phila.***, 172 F. Supp. 2d 600 [159 Educ. L. Rep. 138] (E.D. Pa. 2001).

A parent, individually and on behalf of her sixteen-year-old-child, brought an action seeking damages for injuries sustained by her son after he was assaulted by another student in class. A fact question as to whether the teacher, who was in the room when the student was allegedly assaulted, was presented with a potentially dangerous situation and failed to take "energetic steps to intervene" in time to prevent one student from injuring another, precluded granting summary judgment. The school's contention that it was entitled to summary judgment because the student voluntarily entered into the altercation could not be raised for the first time on appeal. ***Wojtowicz v. Terrace Elementary Sch.***, 732 N.Y.S.2d 527 [158 Educ. L. Rep. 789] (N.Y. App. Div. 2001).

A former student, who was trespassing in the building some two hours after regular school hours, assaulted the plaintiff in the entrance hallway of his high school. The court held that, absent a showing that the attack was foreseeable, the school district could not be held liable for negligent supervision. Although there had been previous trespassing incidents by former students after school hours, none involved physical violence against students resulting in personal injuries. Moreover, any negligent supervision by school officials was not the proximate cause of the plaintiff's injuries. The criminal attack by the assailant was an intervening and unforeseeable act that broke any causal nexus between the alleged negligence of the district and injuries sustained by the student. ***Nossoughi v. Ramapo Cent. Sch. Dist.***, 731 N.Y.S.2d 78 [157 Educ. L. Rep. 806] (N.Y. App. Div. 2001).

A student suffered severe brain damage after he was brutally attacked by another student with serious behavioral

problems after school on a nearby field behind the high school. The plaintiff brought a section 1983 action against various school officials for violations of due process and a state tort claim for negligence. In granting the defendants' motion for summary judgment, the court held that even if school officials exercised poor judgment by accepting the assailant into a restrictive program for students with severe behavioral disorders, and in failing to supervise him after school (a time when they had not explicitly committed themselves to do so), such conduct was not so egregious or conscious-shocking as to establish a substantive due process violation. Discretionary function immunity under the state tort claims act barred the plaintiffs' negligence claim of failure to supervise. ***Willhauck v. Town of Mansfield***, 164 F. Supp. 2d 127 [157 Educ. L. Rep. 634] (D. Mass. 2001).

A sixth-grade student suffered head injuries and seizures as a result of being pushed against the wall of a stairwell by a classmate when the class was returning from recess. The court held that the alleged lack of supervision by the "duty" teachers was not the proximate cause of the student's injuries. The duty teacher at the top of the stairwell was unable to see down the stairwell, and to move to the point on the stairs where the incident occurred in order to break up the altercation. The teacher reasonably discharged her supervisory duty and, even if she was negligent, the incident happened quickly enough to render any such negligent act insufficient to be the cause of the student's injury. ***Jackson v. Madison Parish Sch. Bd.***, 779 So. 2d 59 [152 Educ. L. Rep. 425] (La. Ct. App. 2001).

Plaintiffs alleged that a board of education and a school principal were guilty of educational malpractice and intentional infliction of emotional harm over allegations that the principal encouraged, created, and tolerated an atmosphere of chaos, disruptiveness, and violence at the school so that it became a "place of fear." According to the plaintiffs, the root of the problem was the school's adherence to the Responsive Classroom Method, which emphasized social skills over academics. Acknowledging the "awkward task" that the judiciary performs when attempting to evaluate an educational program, the court of appeals affirmed the trial court's decision dismissing the educational malpractice claim. However, with respect to the claim of intentional infliction of emotional harm, the judgment of the trial court was reversed. The court found that the school tolerated an environment that was disruptive to the point where children were understandably distressed and frightened. ***Bell v. Bd. of Educ. of W. Haven***, 739 A.2d 321 [139 Educ. L. Rep. 538] (Conn. App. Ct. 1999).

A high school student was shot and killed at school while standing in the hallway. The student who fired the shot was on suspension and did not have approval to be on campus. The personal representative of the student's estate brought a negligence action against the school district for negligent supervision, protection, and control of students in its custody. The trial court granted the school district's motion for summary judgment based on the state Tort Claims Act's grant of governmental immunity. The court of appeals reversed, ruling that the school district could not claim immunity under the Act, which provided for a waiver exemption to immunity where gross negligence was involved. The court found that there were genuine issues of material fact as to gross negligence, and that these issues must be resolved before the school district could claim a waiver. ***Etheredge v. Richland Sch. Dist. No. 1***, 499 S.E.2d 238 [126 Educ. L. Rep. 490] (S.C. Ct. App. 1998).

A seventh-grade student sustained injuries when an older student picked him up and slammed him to the ground while both students were waiting for the bus after school. The facts were in dispute concerning where the incident took place, and whether teachers were in the vicinity supervising the students. The injured student filed suit against the principal and the school board for negligent supervision. A trial court granted summary judgment for both defendants based on governmental immunity. On further review, an appellate court affirmed the award of summary judgment for the principal on the basis that the state code provided that employees acting in the scope of their employment, absent a malicious purpose, bad faith, or wanton and reckless behavior, were entitled to immunity. However, the court reversed the grant of immunity in favor of the board since the plaintiff's claim was not barred by any provision of the state governmental insurance and tort claims act. Having found the school board was not protected by immunity, the court remanded the case because the student had made out a prima facie case of negligence, which presented issues for determination by a jury. ***Moore v. Wood County Bd. of Educ.***, 489 S.E.2d 1 [No Educ. L. Rep. Cite] (W. Va. 1997).

A student who was punched in the face by a peer sued the school, claiming it was negligent for its failure to supervise students. The court held that under the discretionary function exemption, the school was entitled to sovereign immunity for the manner in which it implemented its hall duty supervision schedule for teachers. The school was not negligent in making and enforcing its hall duty policy by failing to provide supervision during a gap when a teacher was at lunch. Further, the unprovoked, one-punch assault upon a student by another student was a supervening cause that relieved the school of any liability. ***Franks v. Union City Pub. Sch.***, 943 P.2d 611 [120 Educ. L. Rep. 828] (Okla.1997).

A student riding in a school van pressed the handle of a fork into another student's neck so hard that a red mark was still visible three days later. The school board voted to expel the student for two semesters. The trial court upheld the board's decision to expel, but reduced the suspension to one semester, ruling that a two-semester expulsion was excessive and violated the offending student's right to substantive due process. The Supreme Court of Nebraska did not rule on the substantive due process issue, but held the board ex-

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ceeded its express statutory authority when it adopted a code of conduct stating that it was not a defense to a charge of assault if students did not intend to hurt, so long as they engaged in the conduct that caused the harm. ***Spencer v. Omaha Pub. Sch. Dist.***, 566 N.W.2d 757 [120 Educ. L. Rep. 287] (Neb. 1997).

A high school student, who refused to pay admission for a faculty-student basketball game, shot a middle school student who was accepting admission charges. Earlier, the coach had escorted the high school student off campus after the initial dispute. The student then went home and got his aunt's pistol and came back and shot the middle school student after the game was over. The court rejected the plaintiff's claim of negligent supervision because the fatal shooting of the student was not foreseeable. The shooting occurred off campus, and the school, the coach, and the principal who were supervising the game could not have foreseen that the shooting would occur, even after the dispute arose. ***Kindred v. Bd. of Educ. of Memphis City Sch.***, 946 S.W.2d 47 [118 Educ. L. Rep. 1227] (Tenn. Ct. App. 1996).

A fourteen-year-old student was grabbed and struck in the stomach by another student while riding on a school bus. The court dismissed the plaintiff's negligence action on the basis of sovereign immunity. On appeal, the plaintiff argued that the school board had waived its sovereign immunity by purchasing insurance. The court rejected the claim, finding that the insurance policy had an exclusion clause stating that the policy did not cover claims arising out of the ownership, maintenance, operation, use, loading, or unloading of any automobile. The court ruled that because the school bus was an automobile, the assault by the student fell within the policy exclusion, and sovereign immunity attached. ***Vester ex rel. Carlisle v. Nash/Rocky Mountain Bd. of Educ.***, 477 S.E.2d 246 [113 Educ. L. Rep. 1324] (N.C. Ct. App. 1996).

The parents of a sixth-grade student, who was injured in a group assault by fellow students at an after-school student council meeting while the teacher was temporarily absent, filed suit for damages. In granting the defendants' motion for summary judgment, the court held that the decision of the teacher to leave the students unattended while she attended a faculty meeting was within the scope of her discretionary authority. The actions of school officials in response to the assault were within the scope of policymaking, planning, and enforcement powers attendant to their offices. School officials did not act recklessly or in bad faith. They met with all of the students involved, required community service for the assailants, and met with the plaintiff's parents to discuss investigation and counseling. ***Marcum v. Talawanda City Sch.***, 670 N.E.2d 1067 [113 Educ. L. Rep. 401] (Ohio Ct. App. 1996).

The mother of a sixth-grade student filed suit for injuries sustained by her daughter when another sixth-grade female student assaulted her twice within the same school year. The court of appeals held that because the student's attendance at junior high was voluntary, no special relationship existed with the school district that created a substantive due process right of implied protection from other students. In addition, the student's mother was informed by school officials that the student who earlier assaulted her daughter was again attending the same school, and was given an opportunity to have her daughter transferred to another school. ***Downing v. Brown***, 925 S.W.2d 316 [111 Educ. L. Rep. 560] (Tex. App. 1996).

A student who brought a knife to school and stabbed another student was placed on probation for assault by a juvenile court. After a school disciplinary hearing, she was permanently expelled. The board of education, following a de novo hearing, upheld the expulsion, which the student challenged. The trial court rejected the plaintiff's allegations that the defendants violated the state compulsory school attendance statute and denied her right to a free and public education. In upholding the expulsion, the court of appeals held that the right to a free and public education is not unlimited, and the relevant state statute set no time limit for the permissible duration of expulsion. ***D.B. v. Clarke County Bd. of Educ.***, 469 So. 2d 438 [109 Educ. L. Rep. 435] (Ga. Ct. App. 1996).

Two students were struck with a hammer and stabbed while they were trying to leave the school building. One of the victims had accidentally bumped into one of the assailants in the hallway between classes earlier in the day. Fearing for her safety, the student reported the incident to a teacher forty-five minutes before the attack. She also attempted to report to security officers, but was unable to find them at the main security office or at key locations throughout the school. In a suit against the school district, the jury found for the plaintiffs, but the judge granted a motion to set the verdict aside. The court of appeals reversed, holding that evidence supported a finding that the school district was liable on the theory of negligent supervision for injuries caused to students by the intentional violent acts of fellow students. The acts were sparked by a prior altercation and death threat of which the school, through one of its teachers, was expressly made aware, yet no action was taken. Security officers might have prevented the assaults had they been at their assigned posts. ***Mirand v. City of N.Y.***, 637 N.E.2d 263 [92 Educ. L. Rep. 957] (N.Y. 1994).

The mother of a student who was shot and killed by another student brought a section 1983 action against the school district for not reacting to known threats made against her son. Allegedly, the district had received warnings about the assailant making direct threats of violence to the student in advance of the shooting. The case was consolidated on appeal with an action brought by another mother whose son was stabbed on school premises. The court held that even though school district employees may have received warnings, the district did not have a custodial relationship with the students to trigger a duty to protect them

from dangers imposed by third parties. The school was not liable for creating a hazardous situation by placing the aggressors and the victims in the same location. The aggressors' enrollment preceded any knowledge of the potential danger. ***Graham v. Indep. Sch. Dist. No. I-89***, 22 F.3d 991 [91 Educ. L. Rep. 57] (10th Cir. 1994).

Sexual Assault

A female fifth-grade student was subjected to a prolonged pattern of sexual harassment by a male classmate. His inappropriate behavior included improper attempts to touch the student's breasts and genital area, along with requests for sexual relations. After the principal and teachers allegedly failed to intervene following complaints by the student and her parents, the plaintiffs filed suit under Title IX. The Supreme Court held that a private action for damages for student-to-student sexual harassment may be brought under Title IX against school districts that are recipients of federal funds, if school officials have actual knowledge of, and are deliberately indifferent to, severe, pervasive, and objectively offensive sexual harassment. ***Davis v. Monroe County Bd. of Educ.***, 526 U.S. 629 [134 Educ. L. Rep. 477] (1999).

A federal trial court decided that since the response of school officials to the alleged sexual harassment of a female elementary student by a male student who touched her buttocks was not "clearly unreasonable," it was not "deliberately indifferent," as would support a Title IX claim. Even though school officials could have taken more severe action against the offending student, they did take immediate action including imposing a one-day suspension, holding a conference with his mother, referring him for services, and moving him to another class after the second incident of touching. ***Clark v. Bibb County Bd. of Educ.***, 174 F. Supp. 2d 1369 [159 Educ. L. Rep. 675] (M.D. Ga. 2001).

Finding a school board to be grossly negligent, a jury awarded one million dollars in damages where a mentally disabled student was sexually assaulted by another student outside the school building while waiting for the bus after returning from a field trip. The student was traumatized by the incident, and suffered emotional distress and psychological harm. The trial judge reduced the damage award to $250,000, but otherwise refused to grant the defendants' motion for a judgment notwithstanding the verdict or for a new trial absolute. Evidence at trial revealed that the school was aware that while the regular teacher was away, the teacher's aide placed in charge during her absence was unable to supervise the class. Prior to the incident in question, two students engaged in sex while under the assistant's supervision. At the time of the assault, the aide left the students unattended while she went to the restroom, despite her knowledge of previous sexual encounters between students in the class. In upholding the judgment of the trial court the court of appeals ruled that issues of whether the school district was grossly negligent and whether the sexual assault was foreseeable were questions for the jury to decide. Absent a showing that the damage award was a result of passion, prejudice, or other improper considerations, the district was not entitled to a new trial absolute. The evidence presented to the jury was sufficient to support the actual damages awarded, and they were not so large as to amount to punitive damages. ***Duncan v. Hampton County Sch. Dist. No. 2***, 517 S.E.2d 449 [136 Educ. L. Rep. 1076] (S.C. Ct. App. 1999).

The parents of a male kindergarten student claimed that their child was sexually assaulted and harassed by another male student, and that the defendants' failure to appropriately respond to the incidents violated section 1983 and Title IX. The parents had reported to a teacher, principal, and superintendent repeated incidents of abuse in which a fellow student had fondled their child's genitals and sexually intimidated him. The court granted the defendants' motion to dismiss the section 1983 due process claim because the plaintiffs failed to allege that the state "created" the danger to their child. Rather the plaintiffs merely alleged that the state failed to prevent the assaults from occurring. The court also rejected the special "custodial relationship" argument, finding that compulsory school attendance laws do not create the relationship necessary to create a state duty to protect a person from violence at the hands of a private actor. However, the court denied the defendants' motion to dismiss the Title IX claim. The plaintiffs sufficiently alleged that the board had knowledge of the abuse, and was deliberately indifferent in its response. Also, the defendants responded differently to a case of same sex harassment than they did to that of harassment of a child of a different sex. ***Doe v. Sabine Parish Sch. Bd.***, 24 F. Supp. 2d 655 [130 Educ. L. Rep. 1228] (W.D. La. 1998).

A student was sexually assaulted, in the girls' bathroom on school property, by two fellow high school students who had just recently been enrolled in the school. Both girls had histories of disruptive or abusive behavior, and one of the students had just been released from the state youth commission. The plaintiff filed suit under section 1983 alleging that the defendants' official policies and customs reflected deliberate indifference to the substantive due process rights of students to bodily integrity. The court granted the defendants' motion for summary judgment. There was no special relationship between the student and the school board that created an affirmative duty on the part of the defendants to protect her from harm. The plaintiff was not subjected to state-created danger, and the practice and customs of the school district did not reflect deliberate indifference to the rights of its students. Admittedly the perpetrators had a history of disciplinary problems, but allowing them back in school did not constitute the culpable behavior envisioned in the state-created danger theory. Although it could be argued that placing the perpetrators in the general student population created an opportunity that would not otherwise have existed, there was nothing in the conduct of school

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officials that indicated deliberate indifference to the welfare of students. ***Young v. Austin Indep. Sch. Dist.***, 885 F. Supp. 972 [100 Educ. L. Rep. 975] (W.D. Tex. 1995).

Assaults by Nonschool Personnel

A plaintiff filed a negligence action against a male dance attendee and a school board after her son, a student, was shot by the attendee in the parking lot of a disco club following a school fundraiser. After the trial court entered judgment holding the board and the attendee jointly liable, the board appealed. An appellate court reversed on the ground that the board did not owe a duty to protect the student from being shot in the parking lot by someone attending the dance. Although an expert testified that an adequate uniformed police presence was critical and could have deterred the shooting, the record was devoid of any evidence that suggested there had been prior criminal activity on the premises of the club that would have made it foreseeable to the board that additional security in the parking lot was needed. ***Lee v. B & B Ventures***, 793 So. 2d 215 [157 Educ. L. Rep. 428] (La. Ct. App. 2001).

The parents of a student, who was raped in the girl's locker room by an unauthorized visitor on school premises during school hours, sued the school district for inadequate supervision. A trial court ruled that the decisions of a school custodian, clerical worker, and swimming instructor in not reporting the unauthorized visitor to the principal's office were at the operational or ministerial level, and were not discretionary decisions protected by statutory immunity. According to the court, the defendants were merely implementing a school policy regarding visitors and locker room security. An appellate court disagreed with the finding that the three employees' actions were ministerial since the policies cited in the faculty handbook were not applicable to the named employees. However, it affirmed that the defendants were not entitled to governmental or vicarious official immunity. Imposing liability would not inhibit the decision-making or performance of employees, but rather would encourage them to exercise care when seeing strangers at school in the future. ***S. W. v. Spring Lake Park Sch. Dist. No. 16***, 566 N.W.2d 366 [119 Educ. L. Rep. 1177] (Minn. Ct. App. 1997).

A school vocational secretary, who was responsible for the early dismissal of students, received three telephone calls requesting that a student be allowed to leave school early. The first two calls were made by a person with a male voice. During the second call the secretary informed the caller that based on school policy, the student could not leave unless her mother called the office. The third caller identified herself as the student's mother and requested, because of a family emergency, the student be released to watch her sister's children. After the school released the student, she was murdered by a nonstudent off the school premises while walking to her sister's. In a wrongful death action brought by the student's parents, the court held that the school district and board were protected by sovereign immunity, and granted official immunity to board members, the superintendent, and the secretary, in their individual capacities. On appeal, the plaintiffs argued that the individual defendants negligently failed to perform a ministerial duty imposed by the school handbook. The court rejected the argument, finding that because the making of school policies and monitoring, supervising and controlling student activities involved discretionary decisions, the defendants were entitled to official immunity. ***Perkins v. Morgan County Sch. Dist.***, 476 S.E.2d 592 [113 Educ. L. Rep. 498] (Ga. Ct. App. 1996).

A high school student was attacked by a gang of teenage boys, beaten, and shot while on his way to school. The administrator of his estate brought suit against the school board, which was dismissed based on sovereign immunity. The plaintiff then named the principal and teacher as defendants, alleging that the school board had promulgated rules, policies, and procedures requiring school personnel to be present at the entrance of the school to ensure safe arrival, and the principal and supervising teacher failed to do so. The plaintiff also alleged that the act of implementing the school board's policy was ministerial in nature. The suit was dismissed based on official or qualified immunity. An appellate court affirmed that decisions on how to supervise school children is a discretionary function of a school principal, and that the teacher's task to monitor, supervise, and control students is a discretionary action protected by official immunity. ***Kelly v. Lewis***, 471 S.E.2d 583 [No Educ. L. Rep. Cite] (Ga. Ct. App. 1996).

After their son was shot in the head with a stray bullet and killed by a nonstudent in a melee at school, the parents brought a section 1983 action against school officials for maintaining a dangerous environment and not using an installed metal detector that might have prevented their son's death. The court held that it could not be inferred that school officials were actually aware of a high risk that a nonstudent invader would enter campus and fire a pistol randomly during school hours. Even if the deployment of security devices such as identification badges and metal detectors was haphazard or negligent, deliberate indifference on the part of school officials could not be shown. School districts did not require each student to pass through a detector prior to admission to school. To do so could be very time-consuming and inefficient. ***Johnson v. Dallas Indep. Sch. Dist.***, 38 F.3d 198 [95 Educ. L. Rep. 68] (5th Cir. 1994).

A student was killed by random gunfire in the parking lot of a high school after a school-sponsored dance. The court held that the decision of school officials to sponsor a dance, despite their alleged knowledge that students carried and fired weapons on school property, was not a violation of substantive due process. There was no special relationship between the school district and students at a voluntary

school-sponsored event held outside the time which students were required to attend school. Therefore, the school district had no constitutional duty to protect students from private acts of violence. Even if the state created a danger by sponsoring the dance with the awareness of the associated risks, the court did not think that the conduct of the state actors rose to the level of deliberate indifference. ***Leffall v. Dallas Indep. Sch. Dist.***, 28 F.3d 521 [92 Educ. L. Rep. 1105 (5th Cir. 1994).

Higher Education

A female student allegedly raped by two members of the Virginia Tech football team, brought suit under the Violence Against Women Act, which provided a federal civil remedy for victims of gender-motivated violence. The Supreme Court dismissed the suit because Congress lacked the authority to enact the Act. The statute was unconstitutional because it did not regulate an activity that substantially affected interstate commerce. ***United States v. Morrison***, 529 U.S. 598 [144 Educ. L. Rep. 28] (2000).

A defendant was convicted of aggravated stalking of his ex-wife, who was employed by the University of New Mexico. The court of appeals upheld the conviction, ruling that the university police had jurisdiction to pursue the defendant outside of the officer's statutory jurisdiction, and ultimately stop and effect his arrest under the common law "fresh pursuit" doctrine. The stalking incident occurred in the parking lot of a building owned by the university. The officer requested backup while he was in his jurisdiction, was in constant contact with dispatch, and was involved in pursuit of the defendant at all times after the request for the backup was made. ***State v. Nysus***, 35 P.3d 993 [159 Educ. L. Rpt. 785] (N.M. Ct. App. 2001).

A high school student, attending the university as a "special student" in pre-season soccer camp, was sexually assaulted by a companion she admitted to her university dormitory. The trial court found that the university owed no duty of care to the student, and did not violate any implied contract in housing the student. The state supreme court agreed that, absent any written housing request or contract, the university had not entered into an implied contract to protect the student's safety. However, the court reversed and remanded with regard to the negligence claim. The court ruled that as owner and operator of the residence, the state university owed a duty of care to students as business invitees to reasonably warn and advise students of steps they could take to improve their personal safety. Further proceedings were necessary to establish whether the defendant breached its duty of care. ***Stanton v. Univ. of Me. Sys.***, 773 A.2d 1045 [155 Educ. L. Rep. 566] (Me. 2001).

A defendant was convicted of burglary in the second degree in connection with an incident involving a sorority house located on the university campus. He appealed his conviction on the grounds that the sorority house was unoccupied during the summer break and, therefore, did not constitute a dwelling house for purposes of the burglary statute. In upholding the conviction, the court of appeals ruled that the sorority house was a dwelling within the meaning of the statute. It was usually occupied, and the residents intended to resume occupation within a reasonable period of time. ***People v. Ferguson***, 727 N.Y.S.2d 790 [No Educ. L. Rep. Cite] (N.Y. App. Div. 2001).

A state university did not violate due process when it excluded the plaintiff, a stockbroker and university alumnus who frequented the college to attend events and use the library for investment purposes, from coming on campus after two female students brought complaints against him for stalking. ***Souders v. Lucero***, 196 F.3d 1040 [139 Educ. L. Rep. 878] (9th Cir. 1999).

After the plaintiff, a white student, hit the van of a Korean student with a snowball, a fight ensued. The facts were disputed as to who initiated the fight. Ultimately, the plaintiff was expelled from college for fighting, while the Korean student was exonerated. The plaintiff filed suit alleging racial discrimination, breach of contract, and tortuous interference with contract. On the college's motion to dismiss, the court held that the student handbook and a signed copy of the honor code could be incorporated into the complaint without changing the motion to dismiss into a motion for summary judgment. The student's amended complaint sufficiently alleged that he suffered race and national origin discrimination in the college's disciplinary proceedings. A claim was stated for violating statutory prohibitions against discrimination in contracting, and that the college breached a contractual commitment to afford fundamental fairness in disciplinary proceedings. ***Goodman v. President and Trs. of Bowdoin Coll.***, 135 F. Supp. 2d 40 [152 Educ. L. Rep. 660] (D. Me. 2001).

A community college student had disciplinary charges brought against him for disruptive behavior, threatening and abusive treatment of instructors, academic dishonesty, and bringing "baseless, frivolous lawsuits and academic grievances." The student sued the community college and officials alleging free speech and due process violations, and retaliation in contravention of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The trial court granted the university's motion to dismiss. On appeal, the court ruled that the student's due process claim was barred by collateral estoppel, and affirmed that portion of the district court's order. However, the court decided that the retaliation claims under the First Amendment and ADA were not barred by res judicata or collateral estoppel and remanded that portion of the case for reconsideration. ***Flaherty v. Lang***, 199 F.3d 607 [140 Educ. L. Rep. 870] (2d Cir. 1999).

A college student, who was accused of rape, filed claims of malicious prosecution and violation of due process against campus police officers, his accuser, and the

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university. A federal trial court dismissed all claims against the campus police officers, holding that although charges against the plaintiff were ultimately apparently dropped for lack of evidence of forcible compulsion, based on the testimony of the victim and others, there was probable cause to arrest the student. Issues of material fact precluded granting summary judgment on the malicious prosecution claim against the accuser. With respect to the student's due process claims, the court first held that because his request for counsel was not based upon a Fifth Amendment protection, he had no right to have an attorney present at the campus disciplinary hearing. However, the court ruled that the university violated the student's due process rights by not allowing him an opportunity to cross-examine his accuser. ***Donohue v. Baker***, 976 F. Supp. 136 [121 Educ. L. Rep. 681] (N.D.N.Y. 1997).

After being arrested by university police and charged with sexual battery, obscenity, and simple assault, a student was expelled. The student sued the university, alleging violations of federal civil rights and state law. The court dismissed the claims, holding that because the university and its board of regents were arms of the state, the state was the real party in interest. Therefore, under the Eleventh Amendment, the university and its board were entitled to sovereign immunity. ***Richardson v. Southern Univ.***, 118 F.3d 450 [119 Educ. L. Rep. 827] (5th Cir. 1997).

After an argument and altercation between a student and a resident assistant (RA) during a fire drill in the residence hall, the RA filed criminal battery charges against the student. These charges resulted in the student's arrest and overnight detention in the county jail. The student subsequently brought a section 1983 action against the RA for alleged violations of freedom of speech and unreasonable seizure. The court held that signing of the charge by the RA was not retaliation for the student's exercising his First Amendment right to free speech. The Fourth Amendment claim was dismissed because there was no showing that the RA was acting under the color of state law when he filed the criminal complaint. His action was that of a private citizen, and bore no meaningful relationship to his duties as a resident assistant. ***Teta v. Packard***, 959 F. Supp. 469 [117 Educ. L. Rep. 1055] (ND. Ill. 1997).

An appellate court affirmed a grant of summary judgment in favor of a college on claims of respondeat superior and negligent supervision stemming from the sexual assault of a young man that was allegedly committed by a campus minister in his private residence at night. The plaintiff's relationship with the priest arose separately from contacts at the victim's college, and there was no showing that the relationship in any way was influenced by the priest's role as a campus minister. The court agreed that the college did not have a right or duty to supervise the priest in his residence at night. ***Gebhart v. Coll. of Mt. St. Joseph***, 665 N.E.2d 223 [109 Educ. L. Rep. 931] (Ohio Ct. App. 1995).

Plaintiffs sued a university and its athletic and police departments for wrongful assault, arrest, and prosecution following an altercation after a college football game. The court ruled that under the provisions of a state statute, the plaintiffs' filing a claim with the state claims commission waived any other cause of action based on the same acts or omissions by any state officer or employee. ***Mirabella v. Univ. of Tenn.***, 915 F. Supp. 925 [107 Educ. L. Rep. 674] (E.D. Tenn. 1994).

A student was allegedly raped by a fellow student at a party thrown by the university criminal justice club at a hotel resort. She brought an action against a campus police investigator, the former campus police chief, and the faculty sponsor of the club for constitutional invasion of privacy and the state tort of intentional infliction of emotional distress based on the defendants' actions during and after the investigation of the alleged sexual assault. Reversing the decision of the district court, the court of appeals held that the defendants were entitled to qualified immunity in their individual capacities. ***Cantu v. Rocha***, 77 F.3d 795 [104 Educ. L. Rep. 459] (5th Cir. 1996).

Students with Disabilities

A parent, individually and on behalf of her mentally handicapped fifteen-year-old child, brought a negligence action against the school board for failure to provide adequate supervision. The student was injured in an altercation with another student, causing him to land on his head. The jury awarded $2,697,725 to the child and $3.500,000 to his mother for loss of filial consortium. The judge granted the board's motion for remittitur and reduced the award to the parent to $1,000,000, ruling that the award should cover only the four-year period between the date of the injury and the date of the trial. On appeal, the Supreme Court of Florida held that the parent could recover damages for loss of filial consortium; however, damages should be limited to the period until the child attained the age of majority. ***Cruz v. Broward County Sch. Bd.***, 800 So. 2d 213 [159 Educ. L. Rep. 831] (Fla. 2001).

Plaintiffs brought an action for compensatory and punitive damages under section 1983 and Title IX, alleging a pattern and practice of deliberate indifference on the part of the school district and various administrators to recurrent verbal and physical harassment of their son while he was a student. After taking the deposition of the school psychologist, the plaintiffs sought to amend their complaint to add the psychologist as a defendant, and to assert causes of action under the IDEA and the Rehabilitation Act. In granting the plaintiffs' motion, the court held that where the administrative process under the IDEA would not have provided the parents with the retrospective relief they requested, they were not required to exhaust their remedies under the IDEA prior to amending their complaint. ***Ronald D. ex rel. Timothy D. v. Titusville Area Sch. Dist.***, 159 F. Supp. 2d 857 [156 Educ L. Rep. 944] (W.D. Pa. 2001).

Where a seventeen-year-old female special education student with the IQ of a six-to-eight-year-old child had a sexual encounter with a male special education student in an unlocked school elevator during school hours, a court held that the alleged failure of employees to implement the school district's policies and procedures created to protect students, constituted ministerial acts for which the employees had no statutory immunity. The court maintained that the employees' duties were defined with such precision as to leave nothing to the exercise of judgment. ***Myers v. Doe***, 52 S.W.3d 391 [156 Educ. L. Rep. 727] (Tex. App. 2001).

A student diagnosed with Tourette's Syndrome sufficiently alleged violations of the IDEA and Rehabilitation Act based on claims that he was suspended from school for the remainder of the academic year due to allegedly threatening remarks he made to his principal, without a determination first being made to assess whether his actions were a manifestation of his disability. ***Timothy B. ex rel. J.B. v. Neshaminy Sch. Dist.***, 153 F. Supp. 2d 621 [156 Educ. L. Rep. 181] (E.D. Pa. 2001).

A special education teacher and her classroom assistant's restraint of a first-grade student, who suffered from Asperser's Syndrome, by placing him in a "basket hold" did not violate his substantive due process rights. A federal trial court ruled that the student suffered no physical injury, the force applied was not disproportionate to the need presented, and the teacher's alleged resentment at having the student in her class did not rise to the level of malice or sadism necessary to support a due process claim. ***Brown ex rel. Brown v. Ramsey***, 121 F. Supp. 2d 911 [149 Educ. L. Rep. 392] (E.D.Va. 2000).

A thirteen-year-old special education student was placed in an alternative learning center for the remainder of the school year as discipline for joining with another male student in ripping the break-away pants off a female student, exposing her underwear. The court held that where the student's actions were not a manifestation of his disability, his disciplinary placement for a planned and intentional assault was justified. ***Randy M. v. Tex. City Indep Sch. Dist.***, 93 F. Supp. 2d 1310 [144 Educ. L. Rep. 106] (S.D. Tex. 2000).

After a learning-disabled student slashed another student with a box cutter, he was placed in an alternative school. Although the alternative school offered limited extracurricular activities and did not provide the student a reading instructor certified to teach special education students, the student's behavior improved during his tenure and he earned passing grades in all of his classes, including reading. As such, a federal trial court decided that school officials did not violate either the free appropriate public education or the least restrictive environment provisions of the IDEA by placing the student in an alternate school. The student's inability to control his behavior made it impossible for him to attend regular high school without posing a threat of injury to others. Where there was no showing of harm as a result thereof, the court found that the alleged procedural deficiencies in the hearing to determine whether the student's conduct was a manifestation of his disability, and failure to provide adequate notice of a due process hearing did not violate the IDEA. ***Parent ex rel. Student v. Osceola County Sch. Bd.***, 59 F. Supp. 2d 1243 [138 Educ. L. Rep. 336] (M.D. Fla. 1999).

An educably mentally disabled sixteen-year-old male student sexually assaulted a fourteen-year-old female student in the girl's bathroom of the school gym. The student and her mother filed suit for negligent supervision, alleging that the coach in charge of the special education students left them unsupervised allowing the assault to occur. As a defense, the school district alleged that the student had consented to the sexual encounter. The plaintiffs moved to exclude any evidence of consent, contending that a minor under the age of sixteen is legally incapable of consenting to sexual battery. The trial court agreed that entry of evidence of sexual consent was improper, but the court of appeals reversed, holding that the district should have been able to introduce evidence of consent for purposes of determining liability and damages. The Supreme Court held that evidence of a student's willing participation or consent to sexual intercourse was impermissible as to the issue of liability, but it was admissible insofar as it pertained to the student's claim for damages. ***Doe ex rel. Roe v. Orangeburg County Sch. Dist. No. 2***, 518 S.E.2d 259, [137 Educ. L. Rep. 837] (S.C. 1999).

A special education student was assaulted by other students while riding a school van on the way to attending a private school overseen by the defendant school district. The plaintiff alleged violations, by the defendants, of section 504 of the Rehabilitation Act and the Due Process Clause of the Fourteenth Amendment. The court granted the defendants' motions for summary judgment. It held that the relevant federal rule regulating claims under the Rehabilitation Act did not give rise to a private cause of action. Even if it did, the plaintiffs' section 504 claim would be dismissed because they failed to allege discrimination on the basis of the student's disability. The court further held that even assuming the student had a constitutionally protected property interest, an action for violation of due process would not arise out of a single incident when there was no showing of a previous record of the child being assaulted. ***Mrs. C. ex rel. A.W. v. Marlborough Co.***, 25 F. Supp. 2d 27 [130 Educ. L. Rep. 1262] (D. Conn. 1998).

Where a black student was attacked by white students, he assaulted teachers who broke up the altercation. Following the incident, the student was placed on indefinite suspension pending expulsion. The student's parents requested a special needs evaluation and invoked the "stay put" provision of the IDEA. The court issued a preliminary injunction, holding that the then current educational placement of the plaintiff was a student at the high school, rather than a

student on indefinite suspension. The student's abysmal academic record established a likelihood of success on the plaintiff's claim that a special needs evaluation should have been conducted before the incident. The parents enrolled the student in a private school, mooting the injunction. After placement at the private school did not work out, the parents sought reissuance of the injunction. The court denied the request because the motion did not fall within any of the enumerated grounds for relief under Fed R. Civ. P. 60(b). ***Marcel V. ex rel. Richard V. v. City of Medford***, 924 F. Supp. 320 [109 Educ. L. Rep. 1181] (D. Mass. 1966).

Off Campus Incidents

A middle school student sued the school and state department of natural resources (DNR) for injuries resulting from an at-home explosion of a shotgun shell that he struck with a hammer after hearing a firearms safety lecture by a DNR officer in school. The lecture included a segment on the component parts of a shell. The court held that genuine issues of material fact as to whether the school breached its duty of reasonable care to the student, who was injured off school property when he exploded the shell, precluded summary judgment in the student's personal injury action. ***Mangold v. Ind. Dep't of Natural Res.***, 756 N.E.2d 970 [157 Educ. L. Rep. 861] (Ind. 2001).

A student sued a private high school seeking compensation for injuries sustained when he was allegedly assaulted by fellow students on an overseas field trip. The court held that signing a release prior to the trip did not bar the lawsuit. Fact issues precluded granting summary judgment on the question of the school's liability for negligent supervision. There was no intentional or negligent infliction of emotional distress. ***Doe v. Archbishop Stepanic High Sch.***, 729 N.Y.S.2d 538 [156 Educ. L. Rep. 665] (N.Y. App. Div. 2001).

A school board member was arrested and convicted of felony sexual abuse in a neighboring state. As a result, he was removed from office by a judge under a state law requiring removal for felonies committed in the resident state. In upholding the trial judge's decision, the court of appeals rejected the board member's contention that prosecution and conviction must occur in the home state to justify removal from office. In reconciling a conflict between the statute in question and a provision of the state constitution disqualifying persons who have committed felonies in any state from seeking elective or appointive office, the court held that the legislative intent was to keep convicted felons from holding office, and that a contrary determination would be absurd. ***Caldwell v. Owens***, 781 So. 2d 895 [152 Educ. L. Rep. 891] (La. Ct. App. 2001).

A high school physical education teacher/head basketball coach, involved in an altercation with his fiancée at a local nightclub, resisted arrest and lied under oath at his criminal trial. Although he was ultimately acquitted of all criminal charges, the school district sought to terminate his employment for "misconduct in office," which violated the state code of ethics for the education profession. An ALJ recommended that the plaintiff be reinstated on the grounds that neither alleged offense was serious enough to impair his teaching effectiveness. The trial court disagreed and ruled in favor of the defendants. The court affirmed that evidence of allegedly resisting arrest and lying under oath was sufficient to infer that the teacher's effectiveness and credibility were seriously impaired. Proof of the teacher's impaired effectiveness did not turn on whether the alleged misconduct occurred on school grounds. ***Purvis v. Marion County Sch. Dist.***, 766 So. 2d 492 [147 Educ. L. Rep. 740] (Fla. Dist. Ct. App. 2000).

A school board chose not to renew a probationary teacher's contract after receiving information from a member of the community that he sexually molested the informant's two sons at their grandfather's farm several years before he began his employment with the school. The teacher argued that because the defendants did not adequately investigate the charges of sexual misconduct before terminating his contract, the letter of nonrenewal violated the relevant state statute requiring that notice be given in good faith and without malice. An appellate court affirmed that the board had no common law or statutory duty to investigate the truth of the allegations before deciding not to renew a probationary teacher's contract. ***Smith v. King City Sch. Dist. R-1***, 990 S.W.2d 643 [134 Educ. L. Rep. 1058] (Mo. Ct. App. 1998).

A fifteen-year-old student attending summer school went to the home of his teacher for the ostensible purpose of making up schoolwork. The student alleged that the female teacher "required and induced" him to have sexual intercourse with her. He filed suit against the school district alleging gross negligence in hiring and supervising the summer school teacher. The trial court granted summary judgment for the school, finding that the school system had adequately investigated the teacher's background before hiring her. The court also rejected the charge of gross negligence in supervision of the teacher. The sexual intercourse took place in her home, and not on school premises. The court of appeals affirmed, finding that a governmental entity is not liable for a loss resulting from employee conduct outside the scope of his or her official duties, or which constitutes a crime involving moral turpitude. The school board did not have a duty to protect the plaintiff unless there was evidence that it knew or should have known of the necessity to supervise the teacher outside the classroom. ***Moore v. Berkeley County Sch. Dist.***, 486 S.E.2d 9 [118 Educ. L. Rep. 1222] (S.C. Ct. App. 1997).

A ninth-grade English teacher shot her estranged husband's girlfriend in the leg after a confrontation at the husband's home. The court held that the school board appropriately dismissed the teacher for "immoral conduct" due to the fact that such conduct rendered her unfit to teach

impressionable ninth graders. In addition, the termination did not violate procedural due process. ***In re Thomas***, 926 S.W.2d 163 [111 Educ. L. Rep. 1023] (Mo. Ct. App. 1996).

Where a student challenged his suspension for an off campus assault, an appellate court ruled that the college had jurisdiction to discipline for off campus offenses, and did not act arbitrarily in suspending the student. ***Ray v. Wilmington Coll.***, 667 N.E.2d 39 [110 Educ. L. Rep. 1222] (Ohio Ct. App. 1995).

The trustee of a student, who committed suicide by shooting herself at home, brought a wrongful death action against the school district and guidance counselor. The plaintiff alleged that the board was negligent because it failed to promulgate a policy regarding student suicide prevention, and the counselor was negligent for failure to tell the parents that the student had expressed suicidal thoughts. The court held that the board was protected by statutory immunity since the development of a suicide prevention policy involved discretionary decision-making concerning questions of public policy and balancing competing interests. The court added that official immunity protected the counselor's exercise of independent professional judgment in considering whether to inform the student's parents immediately about her statements. ***Killen v. Indep. Sch. Dist. No. 706***, 547 N.W.2d 113 [109 Educ. L. Rep. 387] (Minn. Ct. App. 1996).

Hazing

Based on its status as the prevailing party in the suit, a newspaper sought reimbursement of the legal costs incurred in seeking the release of university documents regarding the investigation of alleged hazing incidents by the hockey team. The trial court denied the plaintiff's request for an award of attorney fees. In affirming the trial court's decision, the state supreme court found that the newspaper had not successfully secured release of all documents sought, and that several documents it did have released had already been made public record through other means. The court also determined that provisions to recover attorney fees in the Freedom of Information Act, and the state law allowing recovery of such fees, did not require the court in its discretion to order such an award in the case at hand. ***Burlington Free Press v. Univ. of Vt.***, 779 A.2d 60 [156 Educ. L. Rep. 1153] (Vt. 2001).

A recruit alleged negligence, constructive discharge, unsafe workplace, and violations of the state hazing statute by the state police academy. The former cadet alleged that instructors deliberately withheld medical care and water from her while she had a cold, and subjected her to further hazing that ultimately forced her to resign from the academy. The appellate court affirmed the trial court's dismissal of all claims against the defendants. The relevant state hazing law specifically targeted student organizations in colleges and schools, and did not apply to state institutions or actors. A rigorous police-training program did not constitute an unsafe workplace, or establish negligence within the meaning of the statute. ***Perkins v. Commonwealth***, 752 N.E.2d 761 [No Educ. L. Rep. Cite] (Mass. App. Ct. 2001).

A member of a university's voluntary student military training organization brought a section 1983 action against the student leader of the organization and the university, alleging that hazing incidents violated his Fourteenth Amendment right to bodily integrity. A federal trial court granted the university's motion for summary judgment on the grounds of qualified immunity, and the court of appeals affirmed. The conduct of the student leader could not be imputed to school officials; absent evidence of deliberate indifference, the university did not violate the student's rights. ***Alton v. Tex. A&M Univ.***, 168 F.3d 196, [132 Educ. L. Rep. 656] (5th Cir. 1999).

A freshman on the high school football team was attacked and beaten by a member of the team during an "initiation ritual" at summer camp. The student's father sued, alleging negligent failure of school officials to protect his son from attack by other students. A trial court granted summary judgment for the school board based on sovereign immunity, and for the football coach and school principal based on official immunity. An appellate court affirmed that the supervision of student safety is a discretionary function, and under state law there was no liability without a showing of actual malice or actual intent to cause injury. Actual malice excludes any concept of "implied malice" or "reckless disregard." ***Caldwell v. Griffen Spalding Bd. of Educ.***, 503 S.E.2d 43 [128 Educ. L. Rep. 904] (Ga. Ct. App. 1998).

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Nineteenth Series

Drugs and Weapons in Schools

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Due Process Issues

A student expelled for violation of his school's dangerous weapons policy prevailed in his due process claim when the expulsion hearing provided by the assistant superintendent was not held until two weeks after the student was notified of the expulsion, well beyond the statutorily required five-day time limit. ***Kresser v. Sandusky Bd. of Educ.***, 748 N.E.2d 620 [154 Educ. L. Rep. 293] (Ohio Ct. App. 2001).

Two high school students expelled for discharging a pellet gun on school property were not entitled to use a writ of prohibition to challenge their expulsions because of an alleged procedural error by the board. In reversing a trial court decision granting the writ, the Supreme Court of Idaho ruled that the students had been provided adequate notice and a hearing, and the board had acted within the scope of its discretion in expelling the students. ***Rogers v. Gooding Pub. Joint Sch. Dist. No. 231***, 20 P.3d 16 [152 Educ. L. Rep. 303] (Idaho 2001).

In a case that challenged the alleged disparity between the two-semester expulsion of a Mexican American high school student for creating a knife in a power technology class and the balance-of-a-semester suspension of a special education student who had created a pair of wooden knuckles, a federal district court found no substantive or procedural violations. The court reached this conclusion even though the Mexican American student lost all credit for both semesters while the white disabled student was allowed to get credit for the semester in which he was suspended. The court also found insufficient evidence upon which to base an inference that the student's race or national origin motivated the school officials' decisions. ***Escatel ex rel. Escatel v. Atherton***, 2001 WL 755280 (N.D.Ill. 2001).

A student expelled for five days and prohibited from participating in extracurricular activities lost in his Fourteenth Amendment and state statutory challenges to a search of his truck that revealed a BB gun. The school provided all of the due process to which the student was entitled under the due process clause and the state statute when it provided the student and his parents notice of the charges and the time and place of hearing and provided him an opportunity to tell his side of the story and to present evidence and cross-examine witnesses. ***Peterson v. Indep. Sch. Dist. No. 11***, 999 F.Supp. 665 [126 Educ. L. Rep. 796] (D. Minn. 1998).

A seventh-grade student's expulsion for bringing a Swiss army knife to school was upheld where the expulsion comported with minimum due process. Even though the appeal was moot because the period of the expulsion had passed prior to the appeal, the appeals court took the opportunity to treat the case as one of significant importance. The appeals court, in reversing a trial court decision overturning the expulsion, opined that the expulsion was valid since it was not arbitrary and the student had not been denied procedural due process by the manner in which written findings were provided or by the lapse of time between the initial suspension and the school board's final determination. ***Board of Sch. Trs. of Muncie Cmty. Schs. v. Barnell by Duncan***, 678 N.E.2d 799 [117 Educ. L. Rep. 1101] (Ind. Ct. App. 1997).

A student, expelled for the balance of the spring semester and the following fall semester for possession of a gun on school property, was not entitled to a temporary restraining order requiring the school to allow him to take his spring semester final exams or be awarded grades earned through the date of expulsion for that year and to be allowed to attend school the following year. In upholding the expulsion, a federal district court in Kansas held that the expulsion did not violate substantive due process and that the school's expulsion policy comported with the requirements of procedural due process. ***James v. Unified Sch. Dist. No. 512***, 899 F. Supp. 530 [104 Educ. L. Rep. 188] (D. Kan. 1995).

A student was suspended after a school official saw an air gun in plain view inside a student's locked car that was parked on school grounds. The student successfully challenged his suspension on the grounds that the state statute barring students from possessing weapons was unconstitutionally vague and that the school board had denied him due process by substituting the principal's judgment as to whether the air gun was a weapon within state law for its own judgment. ***Dothan City Bd. of Educ. v. V.M.H.***, 660 So. 2d 1328 [103 Educ. L. Rep. 1282] (Ala. Civ. App. 1995).

Vehicle Searches

A Texas federal district court upheld the seizure of a machete found in a student's truck even though the original target for the search was drugs. Because possession of the weapon violated state law, expulsion of the student was appropriate. ***Bundick v. Bay City Indep. Sch. Dist.***, 140 F. Supp. 2d 735 [154 Educ. L. Rep. 183] (S.D. Tex. 2001).

A student, expelled for eight weeks after a gun was found in her car that had apparently been left there by her mother, failed in her effort to overturn the expulsion on the grounds that it was shockingly disparate to the offense. In reversing a trial court's permanent injunction against the school board, a state court of appeals held that the trial court had abused its discretion in granting the injunction. The appeals court reasoned that the board must have taken into consideration mitigating factors regarding the gun's presence in the car since it had the option to suspend this student for up to a year instead of eight weeks. ***Enterprise City Bd. of Educ. v. C.P. ex rel J.P.***, 698 So. 2d 131 (Ala. Civ. App. 1996).

Locker Searches

An eighth-grade student in whose school locker was found a knife and a pager, in violation of school rules, lost in his effort to suppress the items in a delinquency proceed-

ing. In affirming the finding of delinquency, the state's supreme court held that the student had no reasonable expectation of privacy in the locker temporarily assigned to him by the school. ***In re Patrick Y.***, 746 A.2d 405 [142 Educ. L. Rep. 401] (Md. 2000).

A police officer's informing a principal of an anonymous tip he received that a student had a gun on school property did not change the standard for the search. In reversing a trial court decision suppressing a gun found in a student's locker by a principal acting on the police officer's information, a state appeals court held that school officials do not act as agents of the police when they investigate based on a tip from the police. In addition, school officials do not need to provide *Miranda* warnings to a student before questioning about conduct that violates school rules or state statutes. ***In re D.E.M.***, 727 A.2d 570 (Pa. Super. Ct. 1999).

A student in whose locker a switchblade knife was found unsuccessfully sought to reverse the school district's year-long expulsion. A trial court reduced the expulsion to one semester but a state appeals court reinstated the original year-long expulsion, reasoning that it was rationally related to the district's interest in protecting students and staff from violence. In addition, the court opined that the district's decision to expel the student for two semesters was neither arbitrary nor capricious. ***Kolesnick ex rel. Shaw v. Omaha Pub. Sch. Dist.***, 558 N.W.2d 807 [115 Educ. L. Rep. 1054] (Neb. 1997).

A junior high school student in Nebraska could be charged with possession of a concealed weapon when a hunting knife was found in his locker. In affirming a trial court decision, an appeals court held that there was evidence that the juvenile carried the knife to school and the fact that it was found concealed in his coat pocket in his locker was sufficient to establish the concealed weapon charge. ***In re Shea B.***, 532 N.W.2d 52 [100 Educ. L. Rep. 294] (Neb. Ct. App. 1995).

An appellate court upheld a determination that the search of a student's locker for a handgun pursuant to information provided by the mother of another student was reasonable. Even though the information was five-days-old, it was not stale and could be acted upon by school officials. ***In re Joseph G.***, 38 Cal. Rptr. 2d 902 [97 Educ. L. Rep. 1109] (Cal. Ct. App. 1995).

A random search of a student's locker revealed a gun and cocaine in the student's coat pocket. The student was adjudicated delinquent for possession of a gun and possession of a controlled substance with intent to deliver. In response to the student's claim that his Fourth Amendment right to a reasonable privacy expectation in his locker had been violated, the state supreme court opined that lockers were school property as defined by the student handbook. Since the handbook did not permit personal locks, the student's expectation of privacy was not reasonable. The court found the search reasonable in light of the significant risk of imminent serious personal harm to students and staff. ***In Interest of Isiah B.***, 500 N.W.2d 637 [83 Educ. L. Rep. 419] (Wis. 1993).

Entrance to School Searches

The Supreme Court of Pennsylvania upheld a blanket search of all students as a necessary precondition to entering the school. In upholding a lower court decision denying a motion to suppress a knife found during the search, the court held that individualized reasonable suspicion was not necessary where the search was of the entire student population, affected a limited privacy interest, was minimally intrusive, and was proceeded by adequate notice. ***In re F.B.***, 726 A.2d 361 [133 Educ. L. Rep. 528] (Pa. 1999).

A student who entered a school, looked in the general direction of metal detectors, and then decided to leave the school was improperly stopped by an officer who told him he must go through the detectors. The student who revealed to the officer a gun that he was carrying challenged the stop as an illegal seizure under the Fourth Amendment. In upholding the suppression of the gun, a state appeals court held that the officer did not have reasonable suspicion to stop the student and, therefore, seizure of the gun was impermissibly tainted by the illegal detention. ***People v. Parker***, 672 N.E.2d 813 [114 Educ. L. Rep. 920] (Ill. App. Ct. 1996).

A high school student found in possession of a box cutter when subjected to a school-wide search that took place before he was allowed to enter the school lost in his effort to suppress the cutter from his delinquency hearing. In upholding the search, a state appeals court held that, even though the search lacked individualized suspicion, it was conducted in the same manner for all students searched and was minimally intrusive. The court also found that the search was justified because of the high incidence of violence in the area schools. ***In re S.S.***, 680 A.2d 1172 [111 Educ. L. Rep. 1270] (Pa. Super. Ct. 1996).

Book Bag, Clothing, and Purse Searches

A North Carolina appeals court upheld the search by a school principal in a school parking lot of the purse of a student who was apprehended on another campus after she allegedly traveled there to engage in an after-school fight. The search produced a knife and the student was unsuccessful in her motion to suppress the knife in her delinquency trial. In upholding the denial of the motion, the appeals court held that the reasonableness standard governed the principal's search of the juvenile and his approach of the student in the parking lot and subsequent search were reasonable. ***In re D.D.***, 554 S.E.2d 346 [158 Educ. L. Rep. 855] (N.C. Ct. App. 2001).

School officials conducted a legal search of a student's book bag based on their reasonable suspicion that the student had acquired a full-fare bus pass instead of half-fare pass to which he was entitled. Reasonableness was based on

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the student's unbelievable explanation of his inability to produce his half-fare pass. As a result, the weapon found was admissible into evidence. ***In re Trevor C.***, 642 N.Y.S.2d 878 (N.Y. App. Div. 1996).

Two students were found fighting across the street from their high school. The principal, after returning them to campus, noticed that one student's jacket was a little heavier than usual so he checked it for weapons and discovered a marijuana pipe and psilocybin mushrooms, a controlled substance. After a lower court denied the student's motion to suppress the drugs, an appeals court reversed, finding that the search of jacket was not supported by reasonable suspicion that the jacket contained a weapon. As a result, the drugs found in jacket had to be suppressed. ***State ex rel. Juvenile Dep't of Lincoln County v. Finch***, 925 P.2d 913 [113 Educ. L. Rep. 1315] (Or. Ct. App. 1996).

A high school student was expelled after school officials found crack cocaine in his coat pocket while looking for guns and knives in a generalized search in which all male students from grades six to twelve were searched. In upholding the search, the Eighth Circuit held that the Fourth Amendment's exclusionary rule does not apply to school disciplinary hearings. Although the court of appeals found the search to be sweeping, it found it a minimally intrusive search and, therefore, constitutionally reasonable. ***Thompson v. Carthage Sch. Dist.***, 87 F.3d 979 [110 Educ. L. Rep. 602] (8th Cir. 1996).

A student in a behavior disorder class who had a history of making threats toward students and staff members pushed his teacher aside in an effort to engage in fisticuffs with another student in the class. When the student removed his jacket the teacher locked it in a closet because she thought it contained a weapon. After continued aggression toward the teacher the student was arrested and charged with battery. At the police station they discovered marijuana and cocaine in the jacket but no weapon. The student's motion to suppress the drugs was denied. In upholding the motion to suppress, a state appeals court held that teacher had reasonable suspicion to confiscate the jacket and turn it over to the police and that officers have broad statutory authority to conduct a search once they have effected a lawful arrest. ***People v. McKinney***, 655 N.E.2d 40 [103 Educ. L. Rep. 798] (Ill. App. Ct. 1995).

Hallway and Classroom Searches

A high school student successfully challenged a search that revealed a loaded, concealed gun, based on a security aide's claim that he had seen the contour of the gun through the student's jacket. In a delinquency hearing, a family court judge rejected the aide's testimony and suppressed the gun. At a later school board suspension hearing, the board found the search reasonable and suspended the student for a year. A state appeals court reversed the board decision, finding that the exclusionary rule applied to the search based on the family court decision to exclude the gun. Since the gun was the fruit of an unreasonable search, it could not be admitted into evidence and since the time of suspension had passed, the court ordered all references to the suspension expunged from the student's school records. ***Juan C. v. Cortines***, 647 N.Y.S.2d 491 [113 Educ. L. Rep. 353] (N.Y. App. Div. 1996).

A Florida appeals court upheld random classroom searches done by a security team, hired by a school board with the assistance of a school official. In overruling a trial court suppression of a gun found in a student's pocket during a search, the appeals court found that the board had authorized random searches and required that they be minimally intrusive, reasonable, and constitutionally sound. ***State v. J.A.***, 679 So. 2d 316 [112 Educ. L. Rep. 1107] (Fla. Dist. App. Ct. 1996).

Metal Detectors

In upholding an adjudication of a delinquency as a result of finding a knife, a California appeals court held that random metal detector weapon searches did not violate the Fourth Amendment's ban on unreasonable searches and seizures where the school's need to keep weapons off campus was substantial and no suspicion-intense searches were workable. The court also noted that a random selection of students who had passed through the metal detector was minimally intrusive, especially where students were not touched during the search and they were required to open their pockets or jackets only if they set off the metal detector. ***In re Latasha W.***, 70 Cal. Rptr. 2d 886 [123 Educ. L. Rep. 277] (Cal. Ct. App. 1998).

An Illinois appeals court split as to the searches, by school officials or police liaison officers of three students in three separate schools, that produced firearms. In upholding the one search based on the metal detector, the appeals court held that individualized suspicion was not required to render reasonable the use of metal detector screening. Concerning a second search, the court determined that a gun found as a result of an anonymous tip was based on reasonable suspicion. However, the court found unreasonable the search of a student's pockets after the student had waited in the school office forty-five to sixty minutes to be interviewed. The appeals court agreed with the trial court that the search after this amount of time was unreasonable because the student represented no threat to those in the office. ***People v. Pruitt***, 662 N.E.2d 540 [108 Educ. L. Rep. 329] (Ill. App. Ct. 1996).

School Resource/Security Officer Searches

A search in a dean's office by school security officers of a student found wearing gang-affiliated clothing and unable to produce a school identification card was held by

the Court of Appeals of New York to be reasonable. In rejecting the student's motion to suppress a handgun discovered during a search, the court found that statements made to the dean were admissible because they involved a breach of school rules and school safety. However, statements made to the officers were not admissible because they were given before the student had been read his *Miranda* rights. ***People v. Butler***, 725 N.Y.S.2d 534 [154 Educ. L. Rep. 271] (N.Y. 2001).

A student suspended for possession of a telescoping baton that school officials classified as a dangerous weapon unsuccessfully challenged the suspension under state statutes. The search that produced the baton had begun with school security personnel looking for a knife that a bus driver had seen. A federal district court was troubled that the search of students had continued, resulting in the discovery of the baton, after the knife had been handed over to officials. However, the court found that the officer had acted reasonably in the search and was entitled to qualified immunity. ***Shade v. City of Farmington***, 2001 WL 501197 (D. Minn. 2001).

A student unsuccessfully maintained that his adjudication as a delinquent should have been reversed because the trial court erred in admitting a handgun into evidence that was found on him during a pat down by a school police official. In upholding the adjudication, an appeals court not only found that the search was justified at its inception and reasonable in scope, but that the evidence was sufficient to revoke the student's probation. ***C.S. v. State***, 735 N.E.2d 273 [147 Educ. L. Rep. 241] (Ind. Ct. App. 2000).

An Arizona appeals court ruled that a school resource officer who, across the street from a school, questioned and searched a student regarding a gun the student was reported to have had in the school did not have to give a *Miranda* warning. The court held that the police officer had reasonable suspicion to make an investigatory stop of the student without providing a *Miranda* warning. ***In re Roy L.***, 4 P.3d 984 (Ariz. Ct. App. 2000).

A Minnesota appeals court held that statements made by a student who was interrogated by a principal and peace officer relating to a BB gun left overnight in a school locker should have been suppressed by the trial court. In reversing the trial court, the appeals court held that interrogation by a peace officer of a student in custody in a manner likely to elicit incriminating responses requires that the student be afforded the Fifth Amendment's *Miranda* warning protection. ***In re Welfare of G.S.P.***, 610 N.W.2d 651 (Minn. Ct. App. 2000).

A New Mexico student, searched because he smelled of burnt marijuana, failed in his effort to have a handgun found during the search suppressed in his criminal trial. A state appeals court held that the search, which took place by a school resource officer in the presence of the principal, did not require a warrant or probable cause. In affirming the trial court's refusal to suppress the gun, the appeals court reasoned that a school resource officer's search of a juvenile at request of a school official is subject to the reasonable suspicion standard. ***In re Josue T.***, 989 P.2d 431 [140 Educ. L. Rep. 370] (N.M. Ct. App. 1999).

A student who was staggering in the hall was stopped and searched by a school police officer. The search revealed marijuana and a pocketknife. In upholding a trial court decision that the search was justified at its inception and was reasonable in scope, a state appeals court found that searches by school police officers are subject to a reasonable suspicion standard under the state constitution. ***Commonwealth v. J.B.***, 719 A.2d 1058 (Pa. Super. Ct. 1998).

A school liaison police officer's search of a student's clothing that produced a concealed nine-inch knife was governed by a reasonableness standard. In upholding the search, the Supreme Court of Wisconsin ruled that the standard applies to liaison officers who act at the request of, and in conjunction with, school officials. ***In re Angelia D.B.***, 564 N.W.2d 682 [118 Educ. L. Rep. 1191] (Wis. 1997).

A middle school student adjudicated delinquent as a result of a gun being found in his possession lost his claim that the presence of a school resource officer during the search should have required his being read his *Miranda* rights. In affirming a trial court's denial of the student's motion to suppress, a Florida appeals court stated that it would be foolish to allow school officials to conduct searches for dangerous weapons without the aid of a school resource officer. Searches by administrators and/or school resource officers need only meet the reasonable suspicion standard. ***J.A.R. v. State***, 689 So. 2d 1242 [117 Educ. L. Rep. 795] (Fla. Dist. Ct. App. 1997).

Mothers Against Drunk Drivers (MADD) sponsored an alcohol-free dance at a high school and hired local police officers to provide security. To enforce this rule, students who left the dance were not permitted to return. The officers stopped a student when he tried to re-enter through a side door. Officers, after giving the student a pat down because of the smell of alcohol on his breath, discovered a gun. A state trial court denial of the student's motion to suppress the weapon was reversed on appeal. The appeals court concluded that the lower standard of reasonable suspicion did not apply to the search because the officers were not school officials or even school liaisons. ***State v. Tywayne H.***, 933 P.2d 251 [116 Educ. L. Rep. 1234] (N.M. Ct. App. 1997).

The Court of Appeals of New York held that a school security officer could touch the outside of a student's book bag after the bag produced a metallic thud when set down by the student. As a result of the investigative touch that disclosed the presence of a gun-like object in the bag, the officer had reasonable suspicion to look inside the bag. However, the court noted that the thud by itself was insufficient to furnish reasonable suspicion that the bag contained

the weapon. ***In re Gregory M.***, 82 N.Y.2d 588 [88 Educ. L. Rep. 1127] (N.Y. 1993).

Infractions Involving Students with Disabilities

A school board that had suspended a special needs student for being in possession of a knife and threatening another student with the weapon was ordered to reinstate the student and expunge his record. A state court held that the school should have convened the PPT team to determine if the student's behavior resulted from a disability. ***Balbi v. Ridgefield Pub. Schs.***, 2000 WL 1228690 (Conn. Super. Ct. 2000).

Parents were successful in their suit against a school district after their son had been expelled for possession of a miniature Swiss army knife key chain. A federal district court agreed with the parents that the district had violated the boy's IDEA due process rights when it failed to test him following a request from the parents. The court found that the district was required by the IDEA to provide some testing procedure to determine whether the child had a disability and, thus, the expulsion had violated his due process rights. ***Colvin v. Lowndes County***, 114 F. Supp. 2d 504 [147 Educ. L. Rep. 601] (N.D. Miss. 1999).

Failure of parents to exhaust IDEA administrative remedies prevented a federal district court in Indiana from reaching the merits of an expulsion. A fourth-grade diabetic student was expelled for possessing on a field trip an instrument that contained a nail clipper and a 1.5-inch blade. The parents alleged that their child's use of the instrument to taunt other children had been caused by a drop in sugar level. The school based its expulsion on violation of a policy against "knowingly possessing, handling, or transmitting a knife" at a school activity. ***Brown v. Metro. Sch. Dist. of Lawrence Township***, 945 F. Supp. 1202 [114 Educ. L. Rep. 861] (S.D. Ind. 1996).

A child diagnosed with attention deficit hyperactivity disorder (ADHD) was suspended for possession of a gun clip and bullets. After the multi-disciplinary team determined that possession of clip and bullets was not related to the student's disability, he was reassigned to a special management school. The parents sent their child to a private school and sought reimbursement for private school tuition. A federal district court found no IDEA violations and granted the school district's motion for summary judgment. ***Glen III v. Charlotte-Mecklenburg Sch. Bd. of Educ.***, 903 F. Supp. 918 [104 Educ. L. Rep. 1141] (W.D. N.C. 1995).

Fairness of School Penalties

A student brought a gun to school during a choir concert and was expelled for a year by the school board. The student's father filed a petition for judicial review of the school board's decision, which was dismissed by a trial court because no statute provided for such review. A state appeals court affirmed, holding that the father acted without a reasonable basis in law or in fact, and thus the school district was entitled to attorney fees on appeal. ***Daw ex rel. Daw v. Sch. Dist. 91 Bd. of Trs.***, 2001 WL 1646963 (Idaho 2001).

An eighth-grade student, who had taken a binder containing a knife from a suicidal friend and had placed it in his locker, lost in his section 1983 damages claim after he was given a long-term suspension. In his challenge to the school's zero tolerance policy, the student claimed that the policy amounted to violations of his Fourteenth Amendment rights to due process and equal protection and his Eighth Amendment right to be free from cruel and unusual punishment. In upholding the suspension, the Fourth Circuit reasoned that, regardless of the case's harsh results, the courts are not the proper authority to judge the wisdom of a zero tolerance policy or its application to students. ***Ratner v. Loudoun County Pub. Sch.***, 16 Fed. Appx. 140 (4th Cir. 2001).

A student expelled for having a hunting knife in his car in violation of a school's zero tolerance policy was entitled to a trial as to whether the school had violated his due process rights. In reversing summary judgment for the school district, the Sixth Circuit held that suspending or expelling a student for weapons possession, pursuant to the school's zero tolerance policy, even if the student did not knowingly possess any weapon, would not be rationally related to any legitimate state interest, so as to survive a due process challenge. In order for a student to be punished by this policy, the court opined that he must have some knowledge that he was in violation. ***Seal v. Morgan***, 239 F. 3d. 567 [148 Educ. L. Rep. 34] (6th Cir. 2000).

The high court of West Virginia upheld a school board's decision to expel a student for possession of a firearm on school property in violation of a zero tolerance provision even though the student claimed he did not receive proper notice and hearing. The court agreed that the student's mother knew of the hearing and was present and the father was aware of the proceedings as well. ***J.M. v. Webster County Bd. of Educ.***, 534 S.E.2d 50 [147 Educ. L. Rep. 71] (W.Va. 2000).

A high school student, expelled for bringing a look-alike gun to school and for disruptive conduct, was unsuccessful in seeking reinstatement in order to graduate. The court found that the school district had not violated the student's procedural due process rights when it suspended and expelled him and that the handbook provision barring look-alike weapons was not unconstitutionally overbroad or vague. ***Turner v. South-Western Sch. Dist.***, 82 F. Supp. 757 [142 Educ. L. Rep. 71] (S.D. Ohio 1999).

A high school student, whose expulsion for bringing a loaded gun on school property in his pickup truck was modified by the superintendent to permit the student to attend evening classes at the school, lost in his challenge to

the expulsion. A state appeals court upheld the school board's affirmation of the superintendent's decision, finding that under the Gun Free Schools Act a transfer to evening classes on campus was not an expulsion from the student's regular campus within meaning of the Act. As a result, the board's decision was not appealable. ***Aledo Indep. Sch. Dist. v. Reese***, 987 S.W.2d 953 [133 Educ. L. Rep. 1078] (Tex. Ct. App. 1999).

A student, tried as an adult and convicted of carrying a handgun on school property, alleged mitigating circumstances in bringing the gun to school to protect himself from his former gang members. In affirming the conviction, an Indiana appeals court ruled that carrying a gun was not an alternative for self-protection and the conviction did not violate the student's right to bear arms under the state's constitution. ***Dozier v. State***, 709 N.E.2d 27 [133 Educ. L. Rep. 1011] (Ind. Ct. App. 1999).

A seventh-grade A student appealed his expulsion for possessing a Swiss army knife in violation of the school district's zero tolerance policy. The student who found the knife in the hall was using it to file his fingernails when he surrendered it without incident. In reversing the expulsion, a state appeals court found that the school board failed to provide the superintendent with discretion to recommend a modification to the policy's one-year expulsion requirement for possession of a weapon as required by state statute. ***Lyons v. Penn Hills Sch. Dist.***, 723 A.2d 1073 [132 Educ. L. Rep. 490] (Pa. Commw. Ct. 1999).

A middle school student who brought a total of eight .22 caliber bullets to school in his book bag and was suspended for violating a school rule prohibiting the possession of a dangerous or disruptive item successfully challenged his suspension. A state appeals ruled that the student's possession of bullets did not, as matter of law, violate school board rule proscribing use of disruptive, distracting, defacing or dangerous items. ***M.K. v. Sch. Bd. of Brevard County***, 708 So. 2d 340 [125 Educ. L. Rep. 253] (Fla. Dist. Ct. App. 1998).

Two middle school students, expelled for possession of a BB gun on school property, brought separate actions against the school district to enjoin enforcement of their expulsions. A trial court permanently enjoined the district from enforcing the expulsions because a BB gun was not considered a dangerous weapon as defined by the state statute. A court of appeals affirmed the expulsions, holding that the statute governing weapon-free school zones did not preclude the district from establishing a policy mandating permanent expulsion of student for possession of a BB gun on school property. ***Davis v. Hillsdale Cmty. Sch. Dist.***, 573 N.W.2d 77 [123 Educ. L. Rep. 900] (Mich. Ct. App. 1997).

An elementary school student who brought a utility knife with a three-inch blade and a four-inch jagged saw to school and who showed it to other students could be suspended for twenty days. A state appeals court found that substantial evidence supported a violation of the school's policy against possessing a weapon on school premises and that a suspension of twenty school days was not excessive. ***Mandell v. Bd. of Educ. of Syosset Cent. Sch. Dist.***, 662 N.Y.S.2d 598 [121 Educ. L. Rep. 292] (N.Y. App. Div. 1997).

The high court of West Virginia upheld the two month suspension of a high school student for possessing two 3.5-inch knives on a school bus. The court held that the mandatory suspension required by the state's Productive and Safe Schools Act was not facially unconstitutional. However, the court found no compelling interest in the Act's provision that the school district could require parents to reimburse it for part of the cost of providing educational services to the student. Nonetheless, the court cautioned that in some extreme circumstances the effective temporary denial of all state-funded educational opportunities and services to a child removed from regular school under the Act might be permitted. ***Cathe A. v. Doddridge County Bd. of Educ.***, 490 S.E.2d 340 [120 Educ. L. Rep. 1212] (W.Va.1997).

A student, suspended for bringing a look-alike gun to school and pointing it at other students during lunch and after school, lost his claim that his conduct had not been disruptive. A state appeals court upheld the school board, finding that the student's conduct had impinged upon or invaded the rights of others and that the rule under which the student had been suspended was not unconstitutionally vague. ***Spencer v. Unified Sch. Dist. No. 501***, 935 P.2d 242 [117 Educ. L. Rep. 752] (Kan. Ct. App. 1997).

A student permanently expelled from school for stabbing another student lost in her claims that the expulsion violated her right to a public education. In upholding the expulsion, an appeals court held that the permanent expulsion of student for disciplinary reasons did not conflict with or violate the student's constitutional right to free public education or the state's compulsory school attendance statute. ***D.B. v. Clarke County Bd. of Educ.***, 469 S.E.2d 438 [109 Educ. L. Rep. 435] (Ga. Ct. App. 1996).

A student with a replica of a gun who had threatened another student could be expelled for the remainder of the school year. Although the student claimed that he lacked sufficient notice that possession of a weapon could lead to expulsion, the court found the student handbook manifestly clear. A state appeals court found this replica in violation of the handbook because it had caused great distress to the student he had threatened and was so similar to a real gun that a police officer would likely draw his gun in response to its appearance. ***Matter of Expulsion of Polonia from Indep. Sch. Dist. No. 709***, 1996 WL 45169 (Minn. Ct. App. 1996).

Sikh students successfully secured an injunction preventing the school district from enforcing its weapons ban policy as applied to their religious practice of carrying at all times seven-inch ceremonial knives with 3.5 inch blades. A state appeals court found that a trial court had not abused its

discretion in granting the injunction because the policy infringed on the students' free exercise right to practice their religious beliefs. ***Cheema v. Thompson***, 67 F.3d 883 [104 Educ. L. Rep. 57] (9th Cir. 1995).

A high school student who brought a lipstick knife with a 1.25-inch blade to school could be expelled. In upholding the expulsion, a state supreme court reasoned that the knife was a dangerous weapon and represented a threat to safety. The court observed that the student did not have a fundamental right to a public education and the expulsion was rationally related to school officials' interest in protecting other students and staff. ***Doe v. Superintendent of Schs. of Worcester***, 653 N.E.2d 1088 [102 Educ. L. Rep. 781] (Mass. 1995).

A California appeals court upheld expulsion of a student who used a stun gun during an altercation with another student on a different campus. The court held that the school district had the authority to expel the student pursuant to a statute providing that pupils may be suspended or expelled for conduct related to school activity or attendance. Accordingly, the court concluded that a person of ordinary intelligence would recognize that using a stun gun on a school campus during school hours on another district student is related to school activity or school attendance. ***Fremont Union High Sch. Dist. v. Santa Clara County Bd. of Educ.***, 286 Cal. Rptr. 915 [70 Educ. L. Rep. 570] (Cal. Ct. App. 1991).

A high school student who brought a knife to school was recommended by the principal for a ten-day school suspension because the student had not threatened anyone and had good conduct and scholarship grades. Following a hearing the superintendent suspended the student for the remainder of year and the board upheld the suspension. A trial court overturned the suspension, ruling that the board had acted arbitrarily, capriciously, and unreasonably and abused its discretion. On review, a state appeals court reversed the trial court, finding that the decision to suspend the student was based on substantial evidence and was not arbitrary or capricious and, therefore, the district had not abused its discretion. ***Consolidated Sch. Dist. No. 2 v. King by Dresselhaus***, 786 S.W.2d 217 [59 Educ. L. Rep. 919] (Mo. Ct. App. 1990).

A football player with an otherwise clean discipline record unsuccessfully challenged his expulsion for the remainder of the school year for carrying a .357 Magnum pistol. In reversing a trial court decision for the student, a state appeals court found that the expulsion was not arbitrary, unreasonable, capricious or oppressive nor had the board abused its discretion. ***Lusk ex rel. Lusk v. Triad Cmty. Unit No. 2***, 551 N.E.2d 660 [59 Educ. L. Rep. 157] (Ill. App. Ct. 1990).

Statutory Interpretation

A twelfth-grade student was arrested and convicted of violating the Gun-Free School Zone Act which makes it a federal offense for any individual knowingly to possess firearms in a place that the individual believes or has reasonable cause to believe is a school zone. A district court's refusal to dismiss the indictment against the student was reversed by a court of appeals. The Supreme Court affirmed, finding that the Act exceeded Congress' commerce clause authority because enforcement of the Act, which had nothing to do with interstate commerce, would give Congress police power reserved for the states. ***U.S. v. Lopez***, 514 U.S. 549 [99 Educ. L. Rep. 24] (1995).

A high school student successfully challenged his expulsion by the school board for discharging his pellet gun in the direction of a group of youngsters walking in his neighborhood. The student was suspended under a policy that prohibited the possession or use of any firearm or other dangerous object while on school grounds, school board property and facilities, buildings, school buses, motor vehicle on school adjacent grounds, or at any school-sponsored function, or any school board-sponsored or -governed activity. A state appeals court overturned the expulsion because the violation did not occur in a school location. ***M.T. v. Sch. Bd. of Manatee County***, 779 So. 2d 328 [152 Educ. L. Rep. 434] (Fla. Dist. Ct. App. 1999).

An appellate court held that seizure of three loaded revolvers and a loaded sawed-off shotgun by school police officers from a student's car that was parked off campus exceeded the areas for searches delineated in state statute. In reversing a trial court decision, the appeals court found the search was unauthorized under the public school code, which empowers school police to enforce order in school buildings, on school buses, and on school grounds. ***Commonwealth v. Williams***, 749 A.2d 957 [143 Educ. L. Rep. 951] (Pa. Super. Ct. 2000).

An eighteen-year-old student, convicted under a criminal statute for possessing a knife on school property without permission of the chief security officer, unsuccessfully challenged the statute as being unconstitutionally vague. In upholding the conviction, the state supreme court noted that the term, chief security officer, was not vague because a person of ordinary intelligence would have known that this officer would be whoever had responsibility for overseeing security issues at the school. ***People v. Izzo***, 745 N.E.2d 548 (Ill. 2001).

The Supreme Court of Georgia upheld the conviction of a fourteen-year-old student for the stabbing death of a fellow student at a high school, reasoning that the student's possession of a knife on school property could serve as the basis for a felony murder conviction. ***Mosley v. State***, 536 S.E.2d 150 (Ga. 2000).

A Maryland appeals court reversed a finding of delinquency for a student with a butter knife at school. The court reasoned that, in order to convict a person of carrying or possessing a deadly weapon on school property, the state must show that the instrument possessed can reasonably be considered a deadly weapon. ***In re Melanie H.***, 706 A.2d 621 [124 Educ. L. Rep. 608] (Md. Ct. Spec. App. 1998).

A high school student, expelled for possession of a pocketknife during a fieldtrip to a prison, sued the school district, alleging violation of his due process rights. In affirming a trial court decision setting aside the expulsion, an appeals court agreed that the school district had not violated the student's due process rights because he had been provided notice and a hearing. However, the court found that the pocketknife was not a firearm under a state law that required expulsion of a student for at least one year. ***Wood v. Henry Cty. Pub. Schs.***, 495 S.E.2d 255 [123 Educ. L. Rep. 373] (Va. 1998).

A state appeals court reversed a finding of delinquency for a student in whose book bag was found three single-edge razor blades. The court reasoned that the blades did not violate the school safety zone act because they were not "weapons" within the plain meaning of the act. ***In re R.F.T.***, 492 S.E.2d 590 [122 Educ. L. Rep. 330] (Ga. Ct. App. 1997).

A student, expelled from school for one year after being found in possession of a firearm on school property, successfully used a writ of mandamus to compel the school board to provide a regular form of education. The state supreme court upheld lower court decisions that a state constitution provision for a thorough and efficient system of free schools required creation of an alternative program for pupils suspended or expelled for possession of a firearm or other deadly weapon at an educational facility. ***Phillip Leon M. v. Greenbrier County Bd. of Educ.***, 484 S.E.2d 909 [118 Educ. L. Rep. 518] (W.Va. 1996).

A South Carolina appeals court upheld a conviction of a student who had brought to school a razor used for cutting boxes. Although the court agreed that the razor did not meet the statutory definition of a knife, it did fit within the category of "other type of weapon, device or object which may be used to inflict bodily injury or death." ***In re Dave G.***, 477 S.E.2d 470 [113 Educ. L. Rep. 1334] (S.C. Ct. App. 1996).

A student suspended for five days for possession of a knife at school and adjudicated delinquent, both under a state statute prohibiting a dangerous weapon on school property, unsuccessfully challenged his delinquency conviction as double jeopardy. In affirming the conviction, a state appeals court found that a public school's suspension of a student for misconduct that fell within statutory grounds for dismissal from school did not bar subsequent prosecution for same conduct under double jeopardy principles. ***Matter of Welfare of E.R.D.***, 551 N.W.2d 238 [111 Educ. L. Rep. 512] (Minn. Ct. App. 1996).

A youth who had a .357 pellet gun on school grounds and pointed it at another student could be charged with violating a state statute prohibiting instruments that expel metallic projectiles on school grounds even though the gun could not have been fired. In affirming the youth's conviction, a California appeals court found that he violated the statute by possessing a pellet gun that was designed to shoot and that gave the reasonable appearance of shooting capability, even if it could not have been fired. ***In re Arturo H.***, 51 Cal. Rptr. 2d 5 [107 Educ. L. Rep. 914] (Cal. Ct. App. 1996).

A student's adjudication of delinquency for possession of an inoperable handgun on school premises was upheld. In affirming the adjudication, a state court of appeals held that the statute, which prohibits possession of firearm on school property, does not require that the gun be operable in order to establish a violation. ***Matter of Cowley***, 461 S.E.2d 804 [103 Educ. L. Rep. 493] (N.C. Ct. App. 1995).

A student found delinquent for possessing a knife with a blade longer than two and one-half inches on school property successfully challenged his adjudication. In reversing the finding of delinquency, a state appeals court ruled that, because the sharpened part of the knife did not exceed two and one-half inches, it did not come within the scope of a statute outlawing possession on school property of knives with blades longer than two and one-half inches. ***In re Rosalio S.***, 41 Cal. Rptr. 2d 534 [100 Educ. L. Rep. 639] (Cal. Ct. App. 1995).

A minor convicted of attempted manslaughter, unlawful discharge of firearm on school property, and unlawful possession of a firearm on school property prevailed in part in his claim that his conviction violated double jeopardy. In reversing the unlawful possession portion of the conviction, a state appeals court agreed with the student that conviction for both unlawful discharge and possession constituted double jeopardy because it is not possible for a person to discharge a firearm on public property without also being in possession of the same weapon. However, the convictions for attempted manslaughter and unlawful discharge of a firearm on school property were affirmed with the case being remanded for resentencing. ***White v. State***, 651 So. 2d 1264, [98 Educ. L. Rep. 1166] (Fla. Dist. App. Ct. 1995).

A Wisconsin appeals court affirmed a finding of delinquency for a student found in possession of a BB gun on school property. The court reasoned that a pellet or BB air pistol is a dangerous weapon and that the evidence supported the finding that the juvenile knowingly possessed the pistol. ***In re Michelle A.D.***, 512 N.W.2d 248 [89 Educ. L. Rep. 274] (Wis. Ct. App. 1994).

A seventh-grade student who brought an extremely convincing replica of a revolver with bullets and threatened

to blow a hole in the head of a fellow classmate could be expelled for "acts which constitute a threat to the health, safety, and welfare of students and staff members" and/or "acts which are in violation of the state penal code." In upholding the expulsion, a Pennsylvania court noted that, given the offense, the penalty was arguably severe but it found no violation of the student's due process rights. ***G.S. v. W. Shore Sch. Dist.***, 1993 WL 840534 (Pa. Com. Pl. 1993).

A student suspended for ten days and then recommended for expulsion for one semester for possessing an ice pick while on school property had the expulsion overturned. A state appeals court found no evidence that the student, who explained she was returning the ice pick to a friend who left it at her house the evening before, exhibited or brandished or otherwise threatened anyone with the ice pick. Accordingly, the court held that the order expelling the student, who had served a ten-day suspension for bringing the ice pick to school, for one semester was an abuse of discretion. ***Washington v. Smith***, 618 N.E.2d 561 [84 Educ. L. Rep. 1113] (Ill. App. Ct. 1993).

Employees

A substitute teacher was suspended after violating a school district's weapons policy when she drove on campus with three shotguns visible in her vehicle. In upholding a finding of willful misconduct, a state appeals court determined that the teacher's claim that she forgot that shotguns were in the vehicle did not establish good cause for violating the school policy so as to entitle her to unemployment benefits during her suspension. ***Grieb v. Unemployment Comp. Bd. of Review***, 767 A.2d 1138 [151 Educ. L. Rep. 950] (Pa. Commw. Ct. 2001).

A female school district bus driver brought an unsuccessful gender discrimination suit against the school board when she was terminated for possession of a knife and assault on a co-worker on school grounds. A state appeals court, in affirming summary judgment for the school district, found that the plaintiff had not established a prima facie case. She had failed to produce evidence that a similarly situated male had been treated differently. ***Lyons v. Flint Bd. of Educ.***, 2001 WL 1298236 (Mich. Ct. App. 2001).

A school custodian and maintenance worker was discharged for test firing a BB gun on campus after he had inspected and repaired it for a relative. Although the employee had not received a written copy of the school's no-weapons policy he was aware of it. In upholding discharge of the employee, a state appeals court held that the plain language of policy was sufficiently broad to cover conduct for which the employee was discharged; the policy language prohibited possession of a general class of firearms which reasonably included an air rifle and, even if the employee never saw the policy, a reasonable employee would recognize that violation of district's express policy would likely lead to discipline. ***Wolf v. Columbia Sch. Dist. No. 400***, 938 P.2d 357 [118 Educ. L. Rep. 1212] (Wash. Ct. App. 1997).

Negligence Claims

A student severely cut another in the face during a fight on the school bus. The injured student sued the bus driver and school administrator, claiming they failed to protect her from harm by failing to enforce rules prohibiting students from carrying weapons on school property. She alleged they knew the other student regularly carried a knife on school property and had threatened her with it. Even though school officials had knowledge of an altercation on the bus between the two students three weeks earlier, the court upheld the immunity of the school officials, noting that the task of school officials in monitoring, supervising, and controlling students is a discretionary action protected by the doctrine of official immunity. ***Payne v. Twiggs County Sch. Dist.***, 501 S.E.2d 550 [127 Educ. L. Rep. 448] (Ga. Ct. App. 1998).

The parent of a high school student who was fatally stabbed by a second student during an altercation sued the city, alleging that student's death was caused by the negligence of city school district employees. In reversing a trial court's summary judgment for the city, a state appeals court found that the school and its employees should have shown what measures were in place to deal with a student who had a history of weapons violations in school. ***Allen v. City of Boston***, 693 N.E.2d 699 [125 Educ. L. Rep. 203] (Mass. Ct. App. 1998).

The mother of student who was shot to death outside a junior high school during lunch hour sued the city and school, charging that lack of supervision of students was the proximate cause of the student's death. In upholding a trial court's setting aside of a jury verdict for the mother, an appeals court found that the student's mother had failed to establish that lack of supervision was the proximate cause of the student's death, noting that a school is not an insurer of its students' safety even though a school owes a special duty to its students. However, the court did find that the mother's expert security testimony and evidence of prior incidents and presence of weapons around the school had been improperly excluded by the lower court. ***Maness v. City of N.Y.***, 607 N.Y.S.2d 325 [89 Educ. L. Rep. 205] (N.Y. App. Div. 1994).

A teacher alleged that he had been injured when he was unable to summon security personnel to his classroom to remove a student with a weapon because the city and school officials failed to keep an intercom system in good repair. In reversing denial of summary judgment for the school district, a state appeals court found that, in the absence of existence of special duty on part of city and school officials, they owed no duty to provide security to the injured teacher. ***Jacobellis v. City of N.Y.***, 602 N.Y.S.2d 877 [86 Educ. L. Rep. 336] (N.Y. App. Div. 1993).

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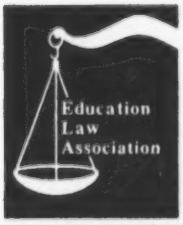

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